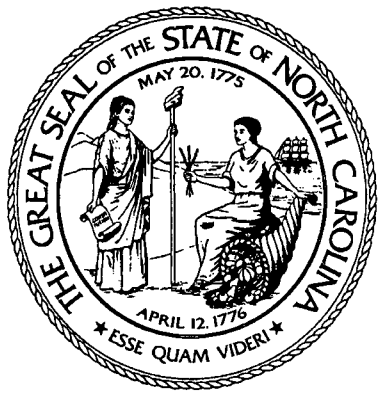
2002

HOUSE FINANCE

MINUTES



HOUSE COMMITTEE ON FINANCE

2002 SESSION

CHAIRMEN:

REPRESENTATIVE GORDON ALLEN

REPRESENTATIVE MONROE BUCHANAN

REPRESENTATIVE PAUL LUEBKE

REPRESENTATIVE WILLIAM L. WAINWRIGHT

COMMITTEE ASSISTANTS:

NANCY BRANTLEY

BLINDA EDWARDS

JOYCE HARRIS

GLENDA JONES

FINANCE COMMITTEE ATTENDANCE

2002 Session

DATES	9/5	9/17	9/19	9/26	9/30	10/2								
Rep. Allen, Chair	✓	✓	✓	✓	✓	✓								
Rep. Buchanan, Chair	✓	✓	✓	✓	✓	✓								
Rep. Luebke, Chair	✓	✓	✓		✓									
Rep. Wainwright, Chair	✓		✓	✓										
Rep. Hill, Vice Chair	✓	✓	✓	✓	✓	✓								
Rep. Jarrell, Vice Chair	✓	✓	✓	✓	✓	✓								
Rep. Alexander	✓	✓	✓	✓										
Rep. Blust														
Rep. Capps						✓								
Rep. Cox	✓		✓	✓	✓	✓								
Rep. Decker	✓	✓	✓	✓	✓	✓								
Rep. Dedmon-Majority Whip					✓									
Rep. Eddins	✓		✓	✓	✓									
Rep. Edwards	✓	✓	✓	✓	✓	✓								
Rep. Gibson	✓	✓	✓	✓	✓	✓								
Rep. Gray	✓			✓	✓	✓								
Rep. Hackney-Speaker Pro Tempore	✓				✓									
Rep. Holliman	✓	✓		✓	✓	✓								
Rep. Hurley	✓	✓	✓	✓	✓	✓								
Rep. Johnson	✓	✓	✓	✓	✓	✓								
Rep. McComas	✓	✓	✓	✓	✓									
Rep. McCombs	✓	✓	✓	✓	✓	✓								
Rep. McMahan	✓	✓	✓	✓		✓								
Rep. Morris	✓			✓	✓	✓								
Rep. Pope	✓	✓	✓											
Rep. Rayfield	✓	✓	✓	✓	✓	✓								
Rep. Starnes	✓			✓		✓								
Rep. Weiss		✓	✓	✓	✓	✓								
Rep. Willingham	✓	✓		✓		✓								
Rep. Wilson	✓			✓	✓	✓								
Rep. Womble	✓	✓	✓	✓	✓	✓								
Rep. Baddour-Majority Leader	✓	✓			✓									
Rep. Cunningham-Majority Whip	✓	✓	✓	✓	✓	✓								
Rep. Earle-Majority Whip	✓	✓												

DATES	9/5	9/11	9/19	9/24	9/30	10/2									
STAFF:															
Cindy Avrette				✓	✓										
Trina Griffin	✓	✓	✓		✓	✓									
Mary Shuping															
Martha Walston	✓	✓	✓		✓										
Richard Bostic	✓	✓	✓	✓	✓	✓									
David Crotts	✓			✓	✓										
Linda Millsaps	✓	✓	✓		✓										
Canaan Huie				✓	✓										
Martha Harris	✓														

FINANCE COMMITTEE ATTENDANCE

2002 Session

DATES	7/24	7/24	7/30	8/1	8/1	8/6	8/7	8/14	8/15	8/20	8/21	8/27	8/27	8/28	8/29
			6:00pm		11:00										
Rep. Allen, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
Rep. Buchanan, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Luebke, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓
Rep. Wainwright, Chair	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Hill, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Jarrell, Vice Chair	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓
Rep. Alexander	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓
Rep. Blust	✓	✓	✓	✓	✓					✓		✓	✓	✓	
Rep. Capps	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Cox	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
Rep. Decker	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓
Rep. Dedmon-Majority Whip	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	
Rep. Eddins			✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Edwards	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓
Rep. Gibson	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Gray	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓
Rep. Hackney-Speaker Pro Tempore	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Holliman	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓	
Rep. Hurley	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓
Rep. Johnson	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	✓	
Rep. McComas	✓			✓	✓	✓	✓	✓	✓	✓			✓		
Rep. McCombs	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. McMahan	✓		✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	
Rep. Morris	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Pope	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Rayfield	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Starnes	✓		✓	✓	✓		✓			✓	✓		✓		
Rep. Weiss	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Willingham	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Wilson	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓		
Rep. Womble	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Baddour-Majority Leader	✓	✓					✓			✓	✓	✓	✓		
Rep. Cunningham-Majority Whip	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
Rep. Earle-Majority Whip	✓							✓			✓		✓		

11:00

DATES	7/24	7/24	7/30	8/1	8/1	8/6	8/7	8/14	8/15	8/20	8/21	8/27	8/27	8/28	8/29
STAFF:															
Cindy Avrette		✓	✓	✓	✓	✓									
Trina Griffin		✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓
Mary Shuping															
Martha Walston	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Richard Bostic	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓
David Crotts	✓			✓	✓				✓						
Linda Millsaps	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓				
Canaan Huie	✓	✓												✓	
Martha Harris	✓	✓		✓	✓				✓					✓	

FINANCE COMMITTEE ATTENDANCE

2002 Session

DATES	6/11	6/12	6/13	6/19	6/26	7/3	7/10	7/16	7/17	7/17 12:00	7/17 4:00	7/18	7/23	7/23 5:00	
Rep. Allen, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Buchanan, Chair	✓	✓	✓	✓	~	✓	✓	✓	✓	✓	✓	✓	~	✓	
Rep. Luebke, Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Wainwright, Chair		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Hill, Vice Chair	✓	✓	✓	✓	~	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Jarrell, Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Alexander	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Blust		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Capps	✓	✓	✓	✓	~	✓		✓	✓	✓	✓	*	✓	✓	
Rep. Cox	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	●	✓	
Rep. Decker	✓	✓●	✓		~	✓	✓	✓	✓	✓		✓	✓	✓	
Rep. Dedmon-Majority Whip	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Eddins	✓	✓	✓	✓			✓	✓	✓	✓	✓				
Rep. Edwards	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Rep. Gibson	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Gray	✓		✓			✓			✓	✓	✓	✓		✓	
Rep. Hackney-Speaker Pro Tempore	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Holliman		✓	✓	✓	~	✓		✓	✓	✓	✓	✓	✓	✓	
Rep. Hurley	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Johnson	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓	
Rep. McComas	✓		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. McCombs	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		
Rep. McMahan		✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	●
Rep. Morris	✓	✓	✓		✓			✓	✓	✓	✓	✓	✓	✓	
Rep. Pope	✓	✓	~	✓	✓	✓		✓	✓	✓	✓	✓		✓	
Rep. Rayfield	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Starnes		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	
Rep. Weiss	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Willingham	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Wilson	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Womble	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Rep. Baddour-Majority Leader	✓				✓			✓	✓	✓	✓				
Rep. Cunningham-Majority Whip	✓	✓	●	✓	✓			✓	✓	✓	✓	✓	✓	✓	
Rep. Earle-Majority Whip								✓	✓	✓	✓	✓			

5:00

DATES	6/11	6/12	6/13	6/19	6/26	7/3	7/10	7/16	7/17	7/17 12:00	7/17 4:00	7/18	7/23	7/23
STAFF:														
Cindy Avrette	✓	✓	.	✓				✓	✓		✓			
Trina Griffin		✓	✓	✓		✓		✓	✓		✓	✓	✓	✓
Mary Shuping						✓		✓	✓	✓	✓			✓
Martha Walston	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Richard Bostic		✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		
David Crotts								✓	✓	✓			✓	✓
Linda Millsaps	✓	✓		✓		✓		✓	✓		✓		✓	✓
Canaan Huie			✓		✓			✓	✓	✓	✓	✓		✓
Martha Harris								✓	✓	✓	✓		✓	✓

HOUSE COMMITTEE ON FINANCE
2001-2002 SESSION
Room/Phone/Seat Assignments

MEMBER	ASSISTANT	PHONE	OFFICE	SEAT
ALLEN, Gordon, Chair	Nancy Brantley	733-5662	530	10
BUCHANAN, Monroe, Chair	Glenda Jones	733-5825	536	30
LUEBKE, Paul, Chair	Joyce Harris	733-7663	529	44
WAINWRIGHT, William, Chair	Blinda Edwards	733-5995	532	8
HILL, Dewey, Vice Chair	Ginny Thurlow	733-5830	1309	21
JARRELL, Mary, Vice Chair	Edna Lee Collar	733-5749	2219	22
ALEXANDER, Martha	Ann Faust	733-5807	2208	32
BLUST, John	Betty Childress	733-5806	1420	105
CAPPS, Russell	Nancy Fox	715-2526	1424	85
COX, Leslie	Jennifer Edwards	733-5746	1220	15
DECKER, Michael	Anne Soles	733-5988	1021	87
DEDMON, Andrew	Lisa Brown	733-5732	2213	12
EDDINS, Rick	Dorie Monroe	733-5800	1319	74
EDWARDS, Zeno	Jo Hinton	733-5906	637	3
GIBSON, Pryor	Shirlyn MacPherson	715-3007	419A	108
GRAY, Lyons	Linda McCrodden	733-5820	533	49
HACKNEY, Joe	Emily Reynolds	733-5752	2207	69
HOLLIMAN, Hugh	Carol Bowers	733-5827	1221	55
HURLEY, Bill	Melissa Riddle	733-5601	2215	23
JOHNSON, Linda	Debbie Pons	733-5605	1209	117
MCCOMAS, Danny	Jayne Nelson	733-5786	606	109
MCCOMBS, Gene	Suzanne Erskine	733-5881	514	75
McMAHAN, Ed	Sharon Cram	733-5934	1104	54
MORRIS, Mia	Joy Feagin	733-5741	1315	65
POPE, Art	Barbara Rhodes	733-5809	539	53
RAYFIELD, John	Brenda Olls	733-5607	609	61
STARNES, Edgar	Pattie Fleming	715-9664	617	112
WEISS, Jennifer	Susan Doty	733-5781	2221	16
WILLINGHAM, Shelly	Carolyn Branch	715-2241	1202	17
WILSON, Connie	Chris Floyd	733-5903	501	97
WOMBLE, Larry	Dorothy McLean	733-5777	537	56
STAFF				
Cindy Avrette, Research		733-2578	545	
Trina Griffin, Research		733-2578	545	
Mary Shuping, Research		733-2578	545	

Martha Walston, Fiscal Research	733-4910	619
Richard Bostic, Fiscal Research	733-4910	619
David Crotts, Fiscal Research	733-4910	619
Linda Millsaps	733-4910	619
Canaan Huie, Bill Drafting	733-6660	401
Martha Harris, Bill Drafting	733-6660	401

COMMITTEE ASSISTANTS:

Blinda Edwards (Rep. Wainwright)	733-5995	532
Joyce Harris (Rep. Luebke)	733-7663	529
Glenda Jones (Rep. Buchanan)	733-5825	536
Nancy Brantley (Rep. Allen)	733-5662	530

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE FINANCE COMMITTEE
2001 – 2002 SESSION

Rep. Allen
(Chair)

Rep. Buchanan
(Chair)

Rep. Luebke
(Chair)

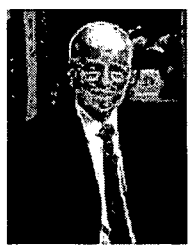
Rep. Wainwright
(Chair)

Rep. Hill
(Vice-Chair)

Rep. Jarrell
(Vice-Chair)

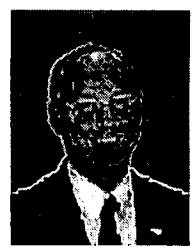
Rep. Alexander

Rep. Blust



Rep. Capps

Rep. Cox



Rep. Decker

Rep. Dedmon

Rep. Eddins

Rep. Edwards

Rep. Gibson

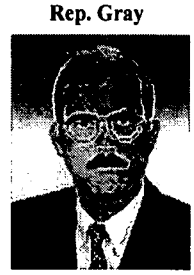
Rep. Gray

Rep. Hackney

Rep. Holliman

Rep. Hurley

Rep. Johnson



Rep. McComas

NORTH CAROLINA GENERAL ASSEMBLY

HOUSE FINANCE COMMITTEE
2001 – 2002 SESSION

Rep. McCombs

Rep. McMahan

Rep. Morris

Rep. Pope

Rep. Rayfield

Rep. Starnes

Rep. Weiss

Rep. Willingham

Rep. Wilson, C.

Rep. Womble

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[redacted]006	Holmes	MERGE JONESVILLE AND ARLINGTON	*HR	Ch. SL 2001-16	03-07-01	03-19-01
[redacted]008	Gray	REPEAL GIFT TAX.	HF	Postponed Indefinitely	01-29-01	10-03-02
H0009	Buchanan	MODIFY AVERY COUNTY OCCY. TAXES.	*H	Ref To Com On Finance	01-29-01	03-07-01
H0011	Sherrill	RAISE HOMESTEAD EXEMPTION INCOME LIMIT.	HF	Postponed Indefinitely	01-29-01	10-03-02
H0019	Smith	CERTAIN LOCAL GOVERNMENTS' CONDEMNATION.	*HR	Ch. SL 2001-36	02-28-01	03-19-01
H0042	Allred	PROPERTY TAX HOMESTEAD EXCLUSION.	*HR	Ch. SL 2001-308	02-01-01	03-27-01
H0044	Cansler	MODIFY INTANGIBLES REIMBURSEMENT.	HF	Postponed Indefinitely	02-05-01	10-03-02
H0050=	Rayfield	LOCAL OPTION HOMESTEAD EXEMPTION.	HF	Postponed Indefinitely	02-06-01	10-03-02
H0053=	Insko	EXEMPT CHILD CARE PROPERTY.	HF	Postponed Indefinitely	02-07-01	10-03-02
H0058	Baker	EXEMPT TOBACCO PAYMENTS FROM INCOME TAX.	HF	Postponed Indefinitely	02-07-01	10-03-02
H0061	Mitchell	INCREASE INTANGIBLES REIMBURSEMENT.	HF	Postponed Indefinitely	02-07-01	10-03-02
H0068	Rogers	DESERT STORM LICENSE PLATE.	HF	Postponed Indefinitely	02-07-01	10-03-02
H0072	Allred	MODIFY VEHICLE TAX REFUND & TAX CAP.	*HR	Ch. SL 2001-497	02-08-01	03-20-01
H0072	Allred	MODIFY VEHICLE TAX REFUND & TAX CAP.	*HR	Ch. SL 2001-497	12-04-01	12-04-01
[redacted]073=	Morris	DESERT STORM LICENSE PLATE.	HF	Postponed Indefinitely	02-08-01	10-03-02
H0077	Fox	CERTAIN CITIES AND TOWNS ANNEXATIONS.	*HR	Ch. SL 2001-37	02-20-01	03-07-01
H0092=	Jeffus	INCREASE NONRESIDENT SEARCH FEE.	*H	Ref To Com On Finance	03-12-01	03-20-01
H0099	Michaux	LOCAL TAX MENU WITH VOTER APPROVAL.	HF	Postponed Indefinitely	07-22-02	10-03-02
H0101	Baker	NONPROFIT SALES TAX REVISION.	HF	Postponed Indefinitely	02-14-01	10-03-02
H0102	Hill	PROPERTY TAX HOMESTEAD EXCLUSION.	HF	Postponed Indefinitely	02-14-01	10-03-02
H0105	Nesbitt	BUNCOMBE COUNTY PRODUCT DEV. FUND.	*HR	Ch. SL 2001-162	02-28-01	03-28-01
H0107	Baker	MOTORCYCLE SAFETY ACT.	*HF	Postponed Indefinitely	03-08-01	10-03-02
H0110	Cole	VARIOUS NEW SPECIAL LICENSE PLATES	*HR	Ch. SL 2001-498	02-14-01	03-29-01
H0110	Cole	VARIOUS NEW SPECIAL LICENSE PLATES	*HR	Ch. SL 2001-498	04-12-01	05-17-01
H0110	Cole	VARIOUS NEW SPECIAL LICENSE PLATES	*HR	Ch. SL 2001-498	09-21-01	10-09-01
H0111	Allen	GOVERNMENT SALES TAX EXEMPTION.	HF	Postponed Indefinitely	02-14-01	10-03-02
H0118	Hill	BELVILLE DEANNEXATION	*HR	Ch. SL 2001-401	07-25-01	08-02-01

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[redacted]24=	Insko	PASS-THROUGH ENTITY/ HOUSING TAX CREDIT.	HF	Postponed Indefinitely	02-15-01	10-03-02
[redacted]143	Tucker	WETLANDS REIMBURSEMENT/LOCAL TAX BASE.	*H	Ref To Com On Finance	04-16-01	05-01-01
H0145	Setzer	TROUTMAN/CATAWBA SATELLITE ANNEXATIONS.	HF	Postponed Indefinitely	02-19-01	10-03-02
H0146	Luebke	MODIFY PARTNERSHIP TAX CREDIT.	*HR	Ch. SL 2001-335	02-19-01	03-19-01
H0146	Luebke	MODIFY PARTNERSHIP TAX CREDIT.	*HR	Ch. SL 2001-335	03-22-01	04-04-01
H0150	Allen	EXTEND TAX DEADLINE.	*HR	Ch. SL 2001-87	02-19-01	03-07-01
H0163=	Jarrell	FURNITURE MARKET IMPROVEMENT ACT.	*HR	Ch. SL 2001-11	03-05-01	03-13-01
H0166	Capps	NO GIFT TAX ON FAMILY FARMS.	HF	Postponed Indefinitely	02-19-01	10-03-02
H0170=	Walend	MULCH BLOWER FUEL TAX REFUNDS.	*HR	Ch. SL 2001-408	02-20-01	06-05-01
H0180=	Cole	EXPAND DEVELOPMENT ZONES.	HF	Postponed Indefinitely	03-14-01	10-03-02
H0184	Edwards	MAKE CAR TAX PROGRESSIVE.	HF	Postponed Indefinitely	02-21-01	10-03-02
H0191=	Hurley	SELF-EMPLOYED DEDUCT HEALTH INS.	*HF	Postponed Indefinitely	02-21-01	02-22-01
H0191=	Hurley	SELF-EMPLOYED DEDUCT HEALTH INS.	*HF	Postponed Indefinitely	04-09-01	10-03-02
H0193=	Jarrell	RETIREMENT HOME TAX CHANGE.	*HR	Ch. SL 2001-17	02-21-01	03-14-01
H0220	Eddins	U.S. NAVY SUBMARINER SPECIALTY PLATE.	HF	Postponed Indefinitely	02-22-01	03-29-01
[redacted]220	Eddins	U.S. NAVY SUBMARINER SPECIALTY PLATE.	HF	Postponed Indefinitely	04-12-01	10-03-02
H0227	Teague	WORLD WAR II SPECIAL LICENSE PLATE.	HF	Postponed Indefinitely	03-15-01	10-03-02
H0231	Allen	BUDGET TECHNICAL CORRECTIONS.	*HR	Ch. SL 2001-513	03-28-01	08-23-01
H0231	Allen	BUDGET TECHNICAL CORRECTIONS.	*HR	Ch. SL 2001-513	08-28-01	08-28-01
H0232=	Allen	BUDGET REVENUE PROVISIONS-2001	*HR	Ch. SL 2001-427	03-21-01	06-19-01
H0232=	Allen	BUDGET REVENUE PROVISIONS-2001	*HR	Ch. SL 2001-427	09-13-01	09-19-01
H0236	Allen	SANITARY DISTRICT SATELLITE ANNEXATION.	*HR	Ch. SL 2001-301	05-08-01	06-14-01
H0250	Barnhart	MIDLAND/LINDEN ANNEXATION/VALIDATION.	*HR	Ch. SL 2001-472	11-06-01	11-13-01
H0253	Brubaker	CERTAIN MANUFACTURED HOMES REAL PROPERTY.	*HR	Ch. SL 2001-506	02-26-01	03-21-01
H0276	Haire	ESTATE TAX ON MULTI-STATE PROPERTY.	HF	Postponed Indefinitely	02-27-01	10-03-02
H0279	Culpepper	MODIFY DARE TRANSFER TAX.	*HF	Postponed Indefinitely	04-24-01	05-09-01
H0279	Culpepper	MODIFY DARE TRANSFER TAX.	*HF	Postponed Indefinitely	05-30-01	10-03-02
H0281	Davis	19TH HOUSE DISTRICT LOCAL ACT-1.	HF	Postponed Indefinitely	04-04-01	10-03-02

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[redacted]90=	Barnhart	MIDLAND CHARTER AMENDMENTS.	*HR	Ch. SL 2001-30	03-06-01	04-02-01
[redacted]311	Redwine	INDIAN TRIBE UNEMPLOYMENT OPTION.	*HR	Ch. SL 2001-184	04-04-01	04-12-01
H0312	Rayfield	NO SALES TAX ON FUNERALS.	HF	Postponed Indefinitely	02-28-01	10-03-02
H0323	Jarrell	CITY OF GREENSBORO LOCAL ACT 2.	HF	Postponed Indefinitely	10-15-01	10-03-02
H0327=	Allen	REVISE TREASURER INVESTMENT AUTHORITY.	*HR	Ch. SL 2001-444	03-01-01	03-19-01
H0327=	Allen	REVISE TREASURER INVESTMENT AUTHORITY.	*HR	Ch. SL 2001-444	09-25-01	09-27-01
H0332	Tolson	ENERGY IMPROVEMENT PROGRAM.	*HR	Ch. SL 2001-338	03-26-01	04-03-01
H0334	Luebke	EXEMPTION FOR INTERNS.	*HR	Ch. SL 2001-285	03-15-01	03-20-01
H0348=	Hurley	TOBACCO ESCROW COMPLIANCE.	*HR	Ch. SL 2002-145	03-14-01	04-12-01
H0359=	Dockham	VIATICAL SETTLEMENTS REWRITE.	*HR	Ch. SL 2001-436	06-19-01	08-01-01
H0364	Sutton	PEMBROKE SATELLITE ANNEXATIONS.	HF	Postponed Indefinitely	03-01-01	10-03-02
H0366=	Barefoot	ARTWORK CONSERVATION FEES.	*HF	Postponed Indefinitely	03-26-01	10-03-02
H0368	Crawford, J.	WELDON ANNEXATION REPEAL.	*HF	Postponed Indefinitely	06-20-01	08-02-01
H0374	Culpepper	STATE BOXING COMMISSION.	*HF	Postponed Indefinitely	03-26-01	04-17-01
H0379=	Owens	BILL LEE ACT CHANGES.	HF	Postponed Indefinitely	03-01-01	10-03-02
[redacted]0385=	Culpepper	CONSOLIDATE BUSINESS PROVISIONS.	*HR	Ch. SL 2001-358	03-07-01	03-15-01
[redacted]411=	Hill	TAX CREDITS FOR GLEANING/DONATION OF PRODUCE.	HF	Postponed Indefinitely	03-01-01	10-03-02
H0416=	Hill	CREDIT FOR VALUE-ADDED AGRI BUSINESS.	*HF	Postponed Indefinitely	03-07-01	10-03-02
H0424	Adams	DCR ADMISSION FEES.	*HF	Postponed Indefinitely	03-26-01	10-03-02
H0432	Saunders	LICENSING SELLING OF CARS.	*HR	Ch. SL 2001-345	03-22-01	03-27-01
H0433	Blust	CONFORM PERSONAL TAX DEDUCT. AND EXEMPT TO IRC.	HF	Postponed Indefinitely	03-01-01	10-03-02
H0436	Weiss	ELECTROLYSIS BOARD FEES.	*HR	Ch. SL 2001-176	03-01-01	03-28-01
H0437=	Tolson	DELIVERY OF DEVICES/ MEDICAL EQUIPMENT.	*HR	Ch. SL 2001-339	04-04-01	05-15-01
H0440	Weiss	EMBALMERS AND FUNERAL DIRECTORS.	*HR	Ch. SL 2001-294	03-01-01	03-06-01
H0440	Weiss	EMBALMERS AND FUNERAL DIRECTORS.	*HR	Ch. SL 2001-294	04-04-01	04-19-01
H0449	Gibson	TROY ANNEXATION.	*HR	Ch. SL 2001-136	04-24-01	05-01-01
H0455	McCombs	SHP REIMBURSEMENT FOR SPECIAL EVENTS.	HF	Postponed Indefinitely	04-23-01	10-03-02
H0489	Hensley	SWIFT CREEK INCORPORATION.	HF	Postponed Indefinitely	03-06-01	10-03-02

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[redacted]513	Buchanan	EXPAND BANK DEDUCTION TO ALL.	*HF	Postponed Indefinitely	03-07-01	10-03-02
[redacted]522	Hurley	AUTHORIZE DEV. AUTHORITY/PER DIEM INCREASE.	*H	Re-ref Com On Appropriations/ Base Budget	04-23-01	08-08-01
H0552	Allred	OPTIONAL TWO YEAR LICENSE PLATES.	*HF	Postponed Indefinitely	04-05-01	10-03-02
H0553	Allred	U.S. WARTIME MILITARY VETERAN SPECIAL PLATE.	*H	Ref To Com On Finance	03-22-01	05-22-01
H0554	Allred	U.S. MILITARY VETERAN SPECIAL REG. PLATE.	*HF	Postponed Indefinitely	04-18-01	10-03-02
H0555	Crawford, J.	HALIFAX REGIONAL AIRPORT AUTHORITY-"QUICK TAKE."	*HR	Ch. SL 2001-73	03-21-01	04-03-01
H0556	Holliman	RAISE LEXINGTON OCCUPANCY TAX.	H	Ref To Com On Finance	03-12-01	03-27-01
H0569=	Ellis	FUQUAY-VARINA DEANNEXATION.	HR	Ch. SL 2001-38	03-12-01	03-20-01
H0571	Allen	SIMPLIFY TAXES ON TELECOMMUNICATIONS-2.	*HR	Ch. SL 2001-430	03-21-01	04-04-01
H0572	Luebke	TAX CITIZENS LIKE BUSINESS/WHITE GOODS.	HF	Postponed Indefinitely	03-12-01	10-03-02
H0575=	Hill	FAIR BLUFF BOUNDARIES.	HR	Ch. SL 2001-55	03-13-01	03-20-01
H0583	Tolson	MODIFY NASH OCCUPANCY TAX.	*HR	Ch. SL 2001-349	06-28-01	07-17-01
H0602	Dockham	TRINITY/THOMASVILLE CORPORATE LIMITS.	HR	Ch. SL 2001-25	03-14-01	03-27-01
H0616	Smith	ATLANTIC BEACH ANNEXATION.	*HR	Ch. SL 2001-137	04-19-01	05-01-01
[redacted]0623	McMahan	PUBLIC CONSTRUCTION LAW CHANGES.	*HR	Ch. SL 2002-161	09-23-02	09-23-02
[redacted]0633	Dockham	ARCHDALE DOUGHNUT HOLE ANNEXATION.	HR	Ch. SL 2001-39	03-15-01	03-27-01
H0635	Mitchell	REGULATE BODY PIERCING.	*H	Re-ref Com On Finance	03-15-01	03-22-01
H0635	Mitchell	REGULATE BODY PIERCING.	*H	Re-ref Com On Finance	04-12-01	05-22-01
H0636	Owens	ELIZABETH CITY CHARTER REVISED.	*HR	Ch. SL 2001-227	04-24-01	05-01-01
H0637	Crawford, J.	MODIFY FUEL TAX FORMULA.	HF	Postponed Indefinitely	03-15-01	10-03-02
H0644=	Crawford, J.	TOLL ROAD AND BRIDGE AUTHORITY CREATED.	*HR	Ch. SL 2002-133	06-18-01	08-13-01
H0668	Baddour	SETTLEMENT PROCEDURES IN DISTRICT COURT ACTIONS.	*HR	Ch. SL 2001-320	03-28-01	04-10-01
H0671	Gulley	MATTHEWS ANNEXATION.	HR	Ch. SL 2001-103	03-19-01	03-27-01
H0685	Gibson	OCCUPANCY TAX FOR CERTAIN COUNTIES.	*HR	Ch. SL 2001-434	03-19-01	07-18-01
H0687	Gibson	"FIRST IN FORESTRY" SPECIAL PLATES.	*H	Ref To Com On Finance	03-19-01	05-22-01
H0688=	Warwick	TAX REVENUE FOR TURFGRASS RESEARCH.	*HR	Ch. SL 2001-514	03-19-01	03-21-01
H0688=	Warwick	TAX REVENUE FOR TURFGRASS RESEARCH.	*HR	Ch. SL 2001-514	05-02-01	09-10-01
H0697	Redwine	BRUNSWICK FIRE FEES.	HR	Ch. SL 2001-74	03-20-01	04-10-01

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[redacted]98	Smith	CARTERET OCCUPANCY TAX CHANGES.	*HR	Ch. SL 2001-381	05-02-01	07-19-01
[redacted]711	Arnold	TEACHER TAX CREDIT.	HF	Postponed Indefinitely	03-21-01	10-03-02
H0712	Smith	MOREHEAD CITY ANNEXATIONS.	HR	Ch. SL 2001-75	03-21-01	04-10-01
H0719=	Fox	MAYODAN SATELLITE ANNEXATION.	*HR	Ch. SL 2001-405	08-28-01	08-28-01
H0748=	Nesbitt	VEHICLE TRANSITION/ PREMIUMS TAX PREPARED FOOD.	*HR	Ch. SL 2001-489	03-22-01	11-13-01
H0751=	Allen	PHARMACY TECHNICIANS.	HF	Postponed Indefinitely	03-26-01	10-03-02
H0756	Rogers	WASHINGTON TRANSFER TAX CHANGE.	HF	Postponed Indefinitely	03-26-01	10-03-02
H0757	Rogers	RAISE WASHINGTON OCCUPANCY TAX.	*HR	Ch. SL 2001-305	03-26-01	05-09-01
H0759	Weiss	HARLEY OWNERS' GROUP LICENSE PLATE.	*H	Ref To Com On Finance	03-26-01	05-22-01
H0765	Fox	MODIFY VANCE OCCUPANCY TAX.	*HR	Ch. SL 2001-321	03-26-01	06-04-01
H0773=	Walker	MILLERS CREEK INCORPORATED.	HF	Postponed Indefinitely	03-26-01	10-03-02
H0789	Starnes	"FIRST IN FURNITURE" SPECIAL LICENSE PLATE.	HF	Postponed Indefinitely	03-26-01	10-03-02
H0795	Gillespie	"CHOOSE LIFE" LICENSE PLATE.	HF	Postponed Indefinitely	06-12-01	10-03-02
H0796	Nye	FARM BALING EQUIPMENT TAX CHANGE.	HF	Postponed Indefinitely	03-26-01	10-03-02
[redacted]0804	Underhill	COUNTY SCHOOL ACQUISITION	*HR	Ch. SL 2001-76	04-11-01	04-24-01
[redacted]0807	McLawhorn	WINTERVILLE ANNEXATION.	HR	Ch. SL 2001-77	03-26-01	04-10-01
H0822	Decker	OAK RIDGE ANNEXATION.	HF	Failed 2nd Reading	03-27-01	08-14-01
H0832=	Jarrell	DIETETICS/NUTRITION PRACTICE ACT.	HF	Postponed Indefinitely	03-28-01	10-03-02
H0834	Edwards	RAISE WASHINGTON AND LEXINGTON OCCY. TAX.	*HR	Ch. SL 2001-365	03-28-01	05-02-01
H0836=	Miller	DURHAM ZONING/CAPITAL FACILITIES FEES.	HF	Postponed Indefinitely	03-28-01	10-03-02
H0838	Eddins	WAKE FOREST DEANNEXATION.	*HR	Ch. SL 2001-246	03-28-01	04-10-01
H0845	Davis	EXCLUDE PENSIONS FROM INCOME TAX.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0848	Arnold	INCOME TAX HEALTH CREDIT.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0850=	McMahan	CHARLOTTE ENTERTAINMENT TAX.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0865	Redwine	CALABASH ANNEXATION/ HOLDEN BEACH.	*HR	Ch. SL 2001-478	07-16-01	10-30-01
H0868	Wright	NAVASSA ANNEXATION/ CHARTER.	*HR	Ch. SL 2001-325	04-25-01	07-03-01
H0874	Yongue	LAURINBURG OCCUPANCY TAX.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0877	Walend	BREVARD SATELLITE ANNEXATIONS.	*HR	Ch. SL 2001-105	04-17-01	05-02-01

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[redacted]78	Walend	BUNCOMBE ANNEXATION REFERENDUM.	HF	Postponed Indefinitely	03-29-01	10-03-02
[redacted]879	Haire	HAYWOOD FIRE TAX DISTRICTS.	HR	Ch. SL 2001-56	03-29-01	04-10-01
H0880	Owens	TRANSFER BERTIE SEPTIC SYSTEMS/ AUTHORIZE FEES.	HR	Ch. SL 2001-78	03-29-01	04-12-01
H0882	Culpepper	DUCK INCORPORATED/ LOCAL DISTRIBUTIONS.	*HR	Ch. SL 2001-394	03-29-01	04-12-01
H0883	Culpepper	TYRRELL OCCUPANCY TAX.	*HR	Ch. SL 2001-468	03-29-01	10-08-01
H0916	Shubert	HOMESTEAD EXEMPTION INCREASE.	HF	Postponed Indefinitely	04-17-01	10-03-02
H0917	Luebke	DURHAM HISTORIC PROPERTIES-2.	*HR	Ch. SL 2001-480	11-13-01	11-15-01
H0926	McComas	MODIFY NEW HANOVER ROOM TAX USE.	HF	Postponed Indefinitely	04-11-01	10-03-02
H0930	Bell	SAMPSON/CLINTON ROOM TAXES.	HF	Postponed Indefinitely	03-29-01	10-03-02
H0942	Hurley	LOCKSMITH LICENSURE.	*HR	Ch. SL 2001-369	04-02-01	06-25-01
H0959	Gray	SALES TAX ON CERTAIN ELECTRICITY.	HF	Postponed Indefinitely	04-03-01	10-03-02
H0969=	Hackney	AIR QUALITY/MOTOR VEHICLE INSPECTION FEES.	*HR	Ch. SL 2001-504	04-04-01	05-16-01
H0975	Nesbitt	NO SALES TAX ON FREE PUBLICATIONS.	HF	Postponed Indefinitely	04-05-01	10-03-02
H0984=	Hill	LANDSCAPE/IRRIGATION CONTRACTORS.	*HF	Postponed Indefinitely	04-05-01	04-10-01
H0984=	Hill	LANDSCAPE/IRRIGATION CONTRACTORS.	*HF	Postponed Indefinitely	07-25-01	09-18-01
[redacted]992=	Earle	HOMEBUILDER RESPONSIBILITY.	HF	Postponed Indefinitely	04-05-01	10-03-02
H1013=	Morris	COSMETIC ART FEES/ CONTINUING EDUCATION.	*HF	Postponed Indefinitely	04-09-01	07-23-01
H1013=	Morris	COSMETIC ART FEES/ CONTINUING EDUCATION.	*HF	Postponed Indefinitely	08-01-01	10-02-01
H1014=	Morris	CERTIFIED PROFESSIONAL MIDWIVES.	HF	Postponed Indefinitely	04-09-01	10-03-02
H1019=	Mitchell	SEPTAGE MGT/ON-SITE WASTEWATER/LIABILITY.	*HR	Ch. SL 2001-505	04-19-01	06-05-01
H1052	Baker	LOW-SPEED VEHICLES DEFINED.	*HR	Ch. SL 2001-356	04-24-01	05-09-01
H1057=	Mitchell	LABOR COMMISSIONER FEE AUTHORITY.	HF	Postponed Indefinitely	04-10-01	10-03-02
H1059	Gibson	RETURNABLE PALLETS TAX EQUALIZATION.	HF	Postponed Indefinitely	04-10-01	10-03-02
H1062=	Gibson	CORRECT DRY-CLEANING/ WHITE GOODS LAWS.	*HR	Ch. SL 2001-265	04-10-01	05-08-01
H1064=	Gibson	SOME ELECTRICITY TAX EXEMPT.	HF	Postponed Indefinitely	04-10-01	10-03-02
H1066=	Tolson	BROADBAND INTERNET TAX CREDIT.	HF	Postponed Indefinitely	04-10-01	10-03-02
H1070	Haire	TRUSTEES AND ESTATE LAW CHANGES	*HR	Ch. SL 2001-413	06-06-01	07-31-01
H1073	Culpepper	REGISTER OF DEED/ BUSINESS	*HR	Ch. SL 2001-390	04-10-01	06-11-01

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		REINSTATEMENT.				
[illegible]086	Tucker	ANIMAL WASTE OPERATORS' LATE FEE.	HF	Postponed Indefinitely	04-11-01	10-03-02
[illegible]106	Church	ENACT MORTGAGE LENDING ACT.	*HF	Postponed Indefinitely	07-19-01	10-03-02
H1110=	Earle	NORTH CAROLINA TOURISM DEVELOPMENT ACT.	*HF	Postponed Indefinitely	05-31-01	10-03-02
H1121	Redwine	COASTAL RECREATIONAL FISHING LICENSE.	*HF	Postponed Indefinitely	08-22-01	10-03-02
H1135=	Walend	BLUE RIDGE PARKWAY FOUNDATION LICENSE PLATE.	HF	Postponed Indefinitely	04-12-01	10-03-02
H1157=	Hackney	ENFORCE TAX COMPLIANCE & EQUALITY/ NO FRAUD.	*HR	Ch. SL 2001-327	04-12-01	07-10-01
H1176	Miner	ELECTRONIC PROPERTY TAX LISTING.	HF	Postponed Indefinitely	04-12-01	10-03-02
H1181=	Cole	EXPAND CALL CENTERS ELIGIBLE FOR BILL LEE ACT.	HF	Postponed Indefinitely	04-12-01	10-03-02
H1213	Tolson	REBATE AND GRANT PROGRAM FOR AFVS.	*HF	Postponed Indefinitely	04-12-01	08-08-01
H1231	Hensley	AMEND APPORTIONMENT FORMULA.	*HF	Postponed Indefinitely	04-12-01	06-25-01
H1284	Weiss	OPENNESS OF COURT RECORDS AND PROCEEDINGS.	*HR	Ch. SL 2001-516	06-19-01	08-01-01
H1292	Blust	TAXPAYER BILL OF RIGHTS.	HF	Postponed Indefinitely	04-12-01	10-03-02
[illegible]298	Gibson	INCREASE COMMERCIAL UST FEES.	HF	Postponed Indefinitely	04-12-01	10-03-02
H1302	Gibson	LUST/EXTEND SUNSET/ INCREASE TANK FEES.	HF	Postponed Indefinitely	04-12-01	10-03-02
H1313	Alexander	INTERPRETER/ TRANSLITERATOR LICENSURE.	*HR	Ch. SL 2002-182	04-12-01	09-03-02
H1362	Fox	ADVANCE HEALTH CARE DIRECTIVES REGISTRY.	*HR	Ch. SL 2001-455	05-30-01	08-13-01
H1362	Fox	ADVANCE HEALTH CARE DIRECTIVES REGISTRY.	*HR	Ch. SL 2001-455	09-21-01	10-08-01
H1379	Insko	INCOME TAX THROWBACK RULE.	HF	Postponed Indefinitely	04-25-01	10-03-02
H1383=	Allen	HOUSING FINANCE AGENCY BONDS.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1384	Allen	HFA BONDS.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1388	Hurley	EXTEND SUNSET ON STATE PORTS TAX CREDIT.	*HR	Ch. SL 2001-517	04-26-01	08-16-01
H1388	Hurley	EXTEND SUNSET ON STATE PORTS TAX CREDIT.	*HR	Ch. SL 2001-517	10-02-01	11-15-01
H1389	Hurley	RETIRED MAGISTRATES BILL.	*HR	Ch. SL 2001-483	05-17-01	05-31-01
H1396	Michaux	FEES FOR CORPORATE	HF	Postponed	04-26-01	10-03-02

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		CERTIFICATE OF EXISTENCE.		Indefinitely		
H1397	Goodwin	INCREASE SERVICE OF PROCESS FEE.	*H	Ref To Com On Finance	04-26-01	05-31-01
H1409	Goodwin	VIDEO POKER REG. & ENFORCEMENT FEE.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1411	Tolson	TAX INCENTIVES FOR ALTERNATIVE FUEL VEHICLES.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1417	Insko	EARNED INCOME TAX CREDIT/INCREASE UPPER RATES.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1422	Boyd-McIntyre	BACK-TO-SCHOOL SALES TAX HOLIDAY.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1423	Nye	SPEECH PATHOLOGISTS/ AUDIOLOGISTS FEES.	HF	Postponed Indefinitely	04-26-01	10-03-02
H1425=	Allen	TECHNOLOGICAL DEVELOPMENT TAX CREDIT.	HF	Postponed Indefinitely	04-30-01	10-03-02
H1427		AMEND USE VALUE STATUTES.	*HR	Ch. SL 2001-499	05-08-01	08-22-01
H1428		LOCAL OPTION TRANSFER TAX.	HF	Postponed Indefinitely	05-29-01	10-03-02
H1429		SUPPORT EDUCATION/NEW UPPER-INCOME TAX BRACKET.	HF	Postponed Indefinitely	05-09-01	10-03-02
H1430		STATE CAPITAL FACILITIES FINANCING ACT.	*HF	Postponed Indefinitely	06-20-01	06-25-01
H1430		STATE CAPITAL FACILITIES FINANCING ACT.	*HF	Postponed Indefinitely	06-28-01	07-04-01
H1431	Hackney	CAR PROPERTY TAX CREDIT.	*HR	Ch. SL 2001-406	05-10-01	08-07-01
H1432	Insko	ADDITIONAL TRANSIT AUTHORITY REGISTRATION TAX.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1433		REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1434		BILL LEE TIER DESIGNATION CHANGE-1.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1435		BILL LEE TIER DESIGNATION CHANGE-2.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1436	Pope	CCRC LEASED PROPERTY.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1438		EXEMPT CERTAIN MILITARY PAY FROM INCOME TAX.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1439		WATER AND SEWER AUTHORITIES.	*H	Ref To Com On Finance	05-10-01	06-28-01
H1439		WATER AND SEWER AUTHORITIES.	*H	Ref To Com On Finance	07-26-01	08-22-01
H1440		REFORM BILL LEE ACT - 1.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1442		REVISE CIGARETTE	HF	Postponed	05-10-01	10-03-02

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		MANUFACTURER CREDIT.		Indefinitely		
[redacted]1444		EXPAND CHILD HEALTH INSURANCE.	HF	Postponed Indefinitely	05-10-01	10-03-02
[redacted]446		ELIMINATE VEHICLE PROPERTY TAX.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1448		MAKE MEALS TAX PENALTIES UNIFORM.	*HR	Ch. SL 2001-264	05-10-01	05-22-01
H1450		NO TAX ON HOMES/EQUAL SCHOOL FUNDING.	HF	Postponed Indefinitely	05-10-01	10-03-02
H1482=		SALUDA DEANNEXATION.	HR	Ch. SL 2002-6	05-29-02	06-19-02
H1486		ROANOKE RIVER BRIDGE NO-WAKE ZONE.	HR	Ch. SL 2002-39	06-05-02	06-18-02
H1490		SECURE LOCAL REVENUES.	*HR	Ch. SL 2002-120	06-10-02	06-12-02
H1506		GROCERY STORE CREDIT - DEVELOPMENT ZONE.	HF	Postponed Indefinitely	06-04-02	10-03-02
H1507		CIGARETTE TAX FOR PUBLIC EDUCATION.	HF	Postponed Indefinitely	06-04-02	10-03-02
H1509		REVENUE CHANGES/ EXEMPT UNC TRUST PROPERTY.	*HF	Postponed Indefinitely	06-04-02	06-13-02
H1509		REVENUE CHANGES/ EXEMPT UNC TRUST PROPERTY.	*HF	Postponed Indefinitely	07-23-02	10-03-02
H1510=		ICARD FIRE TAX RATE.	HR	Ch. SL 2002-7	06-04-02	06-13-02
H1517		LITTLETON CHARTER.	*HR	Ch. SL 2002-20	06-05-02	06-13-02
H1520=		EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT.	*HR	Ch. SL 2002-99	06-05-02	06-26-02
H1520=		EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT.	*HR	Ch. SL 2002-99	07-29-02	08-07-02
[redacted]1521		CONFORM MOBILE TELECOMMUNICATIONS SOURCING.	HR	Ch. SL 2002-16	06-05-02	06-12-02
H1523		AMEND PROPERTY TAX LAWS.	*HR	Ch. SL 2002-156	06-05-02	07-31-02
H1525=		RED CROSS CHARTER.	*HR	Ch. SL 2002-56	06-25-02	07-08-02
H1528		REPEAL SALES TAX ON FERTILIZER AND SEED.	HF	Postponed Indefinitely	06-05-02	10-03-02
H1530=		TABOR CITY ASSESSMENTS.	HR	Ch. SL 2002-13	06-05-02	06-12-02
H1531		CIGARETTE TAX FOR PUBLIC SCHOOLS.	HF	Postponed Indefinitely	06-05-02	10-03-02
H1535		BUTNER TAX RATE.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1536		IRC UPDATE.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1547		CIGARETTE TAX $1 A PACK.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1548		APPLY SALES TAX TO CERTAIN VEHICLES.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1549		EITC/SALES TAX ON MACHINERY.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1550		REPEAL CIGARETTE EXPORT TAX CREDIT.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1551		CONFORM TAX ON BANKS.	HF	Postponed	06-06-02	10-03-02

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				Indefinitely		
H1554		CASINO NIGHTS FOR NONPROFITS.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1563=		HAZARDOUS WASTE GENERATOR FEE INCREASE.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1568		SEDIMENTATION ACT IMPROVEMENTS.	*H	Re-ref Com On Finance	06-25-02	07-03-02
H1571		ANSON LOCAL SALES TAX FOR MEDICAID.	HF	Postponed Indefinitely	06-06-02	10-03-02
H1576		BADIN CHARTER.	HF	Postponed Indefinitely	06-06-02	07-10-02
H1578		REMOVE SCRAP TIRE TAX SUNSET.	HR	Ch. SL 2002-10	06-06-02	06-19-02
H1587		FARMVILLE ANNEXATION.	HR	Ch. SL 2002-8	06-06-02	06-19-02
H1589=		PRINCETON CHARTER CONSOLIDATION.	HR	Ch. SL 2002-52	06-10-02	07-10-02
H1591		MENTAL HEALTH REVENUE.	HF	Postponed Indefinitely	06-10-02	10-03-02
H1592		MEDICAID SUPPLEMENT ACT.	HF	Postponed Indefinitely	06-10-02	10-03-02
H1596		FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	HF	Postponed Indefinitely	06-10-02	10-03-02
H1601=		CIGARETTE TAX 50 CENTS A PACK.	HF	Postponed Indefinitely	06-10-02	10-03-02
H1603		IRC UPDATE.	HF	Postponed Indefinitely	06-11-02	10-03-02
H1606		RAISE ALCOHOL/ CIGARETTE REV. TO SAVE SERVICES.	HF	Postponed Indefinitely	06-11-02	10-03-02
H1609		DURHAM CITY INVESTMENTS.	*HR	Ch. SL 2002-31	06-18-02	06-26-02
H1613		HARRISON/HARTSEASE FIRE DISTRICT BOUNDARIES.	HR	Ch. SL 2002-9	06-12-02	06-19-02
H1620=		JONESVILLE OCCUPANCY TAX.	*HR	Ch. SL 2002-95	06-12-02	07-23-02
H1626=		CATAWBA COMM. COLL/ HOSIERY TECH. CENTER.	HF	Postponed Indefinitely	06-13-02	06-19-02
H1629		THOMASVILLE PRIVATE SALE.	HR	Ch. SL 2002-53	06-12-02	07-03-02
H1630=		NASCAR DRIVER THEME SPECIAL PLATES.	HF	Postponed Indefinitely	06-12-02	10-03-02
H1631		HMONG VETERANS LICENSE PLATE.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1632		SALES TAX CHANGES/ MEDICAID.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1633		ACCELERATE LOCAL OPTION SALES TAX.	*HF	Failed 2nd Reading	06-13-02	07-16-02
H1633		ACCELERATE LOCAL OPTION SALES TAX.	*HF	Failed 2nd Reading	07-17-02	07-17-02
H1638		CRIM. HIST. CHECK/ CONFORM SEX OFF. REG.	*HR	Ch. SL 2002-147	08-27-02	09-19-02
H1640		DUCK/MANTEO/CHOWAN/ BERTIE LOCAL AMENDMENTS.	*HR	Ch. SL 2002-141	07-31-02	09-05-02

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[redacted]642		CONFORM TAX RATE ON CERTAIN VEHICLES.	HF	Postponed Indefinitely	06-13-02	10-03-02
[redacted]643		CLOSE BANK TAX LOOPHOLE TO SAVE EDUCATION.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1644		INCOME SURTAX TO SAVE EDUCATION AND SERVICES.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1645		CLOSE CORPORATE LOOPHOLES TO SAVE EDUCATION.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1646		ROWLAND ARREST JURISDICTION.	*H	Re-ref Com On Judiciary III	06-13-02	07-10-02
$ H1656		**TEMP. REVENUE INCREASE TO PROTECT CHILDREN.**	**HF**	**Postponed Indefinitely**	**06-13-02**	**10-03-02**
H1661=		LEE COUNTY PRIVATE SALE.	*HR	Ch. SL 2002-81	06-13-02	07-16-02
H1662		ROANOKE RAPIDS/ BRUNSWICK ANNEXATION.	*HR	Ch. SL 2002-67	06-13-02	06-26-02
H1665=		INTERSTATE AIR COURIERS - BILL LEE.	*HR	Ch. SL 2002-146	06-13-02	08-28-02
H1668		SOUTHPORT OCC. TAX/ BALD HEAD VEHICLE FEES.	*HR	Ch. SL 2002-129	06-13-02	07-16-02
H1669		SUNSET HARBOR INCORPORATED.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1670		SUBSIDIARY DIVIDEND CHANGES.	*HR	Ch. SL 2002-136	06-13-02	07-18-02
[redacted]1670		SUBSIDIARY DIVIDEND CHANGES.	*HR	Ch. SL 2002-136	09-25-02	09-26-02
[redacted]1679		INCORPORATE OSSIPEE.	*HR	Ch. SL 2002-137	06-13-02	09-26-02
H1684		THOMASVILLE DEANNEXATION.	*HR	Ch. SL 2002-45	06-13-02	07-03-02
H1685		FOUR OAKS ANNEXATION/ DEANNEXATION.	*HR	Ch. SL 2002-125	06-13-02	08-08-02
H1687		ARCHDALE OCCUPANCY TAX.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1690		CANDOR/NORWOOD ANNEXATION.	*HR	Ch. SL 2002-46	06-13-02	07-03-02
H1693		EITC/SALES TAX ON FOOD.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1694		CLOSE CORPORATE TAX LOOPHOLES.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1696		LAW ENFORCEMENT ESCORT FEE.	*HF	Postponed Indefinitely	06-13-02	07-23-02
H1707		NEW HANOVER BEACH TOWNS TOURISM ACT.	*HR	Ch. SL 2002-138	06-13-02	09-19-02
H1717		SALES TAX ON CONSTRUCTION MATERIALS.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1718		AUTHORIZE INTERSTATE ABC SHIPMENT.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1720		WILMINGTON OCCUPANCY TAX.	*HR	Ch. SL 2002-139	06-13-02	09-19-02
H1725		PITTSBORO	HF	Postponed	06-13-02	10-03-02

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		DEANNEXATION.		Indefinitely		
$ [illegible]726=		**UNC NONAPPROPRIATED CAPITAL.**	***HR**	**Ch. SL 2002-173**	**08-27-02**	**08-28-02**
[illegible]729		ALLOW DIRECT ABC SHIPMENT.	HF	Postponed Indefinitely	06-13-02	10-03-02
H1732		GREENSBORO VEHICLE TAX.	HF	Postponed Indefinitely	06-13-02	10-03-02
$ H1734=		**NC ECONOMIC STIMULUS AND JOB CREATION ACT.**	***HR**	**Ch. SL 2002-172**	**06-17-02**	**08-05-02**
H1736		RETIRED LEGISLATOR LICENSE PLATE.	*H	Ref To Com On Rules and Operations of the Senate	06-17-02	08-01-02
H1737		GOVERNOR'S EFFICIENCY STUDY COMMISSION.	HF	Postponed Indefinitely	06-17-02	10-03-02
H1745		SPECIAL LICENSE PLATES.	*HR	Ch. SL 2002-134	06-17-02	07-16-02
H1745		SPECIAL LICENSE PLATES.	*HR	Ch. SL 2002-134	08-29-02	09-17-02
H1747		CHIROPRACTIC TECHNICIANS FEE.	*HR	Ch. SL 2002-59	06-17-02	06-26-02
H1751=		NC TOURISM DEVELOPMENT ACT.	*HF	Postponed Indefinitely	06-17-02	09-17-02
H1753		BOND AND INCENTIVE ACT OF 2002.	*H	Placed On Cal For 10/2/2002	06-17-02	10-01-02
H1754		LIQUOR TAX/FUNDS FOR MEDICAID DRUG CO-PAYMENT.	HF	Postponed Indefinitely	06-17-02	10-03-02
H1761=		FINANCING PARKS, RECREATION, AND HERITAGE.	HF	Postponed Indefinitely	06-17-02	07-09-02
[illegible]1761=		FINANCING PARKS, RECREATION, AND HERITAGE.	HF	Postponed Indefinitely	07-31-02	10-03-02
H1762=		ENFORCE MASTER SETTLEMENT AGREEMENT.	HF	Postponed Indefinitely	06-17-02	10-03-02
S0003	Tony Rand	DESERT STORM LICENSE PLATE.	*HR	Ch. SL 2001-40	03-15-01	04-03-01
S0024	T. LaFontine Odo	WEST NORMAN INCORPORATION.	*HF	Failed 2nd Reading	04-10-01	05-03-01
S0024	T. LaFontine Odo	WEST NORMAN INCORPORATION.	*HF	Failed 2nd Reading	05-29-01	07-10-01
S0025	Luther H. Jordan	LEASE-PURCHASE UP TO THREE PRISONS.	*HR	Ch. SL 2001-84	04-11-01	04-19-01
S0035	T. LaFontine Odo	MECKLENBURG/ IREDELL BOUNDARY CORRECTION.	*HR	Ch. SL 2001-429	09-20-01	09-27-01
S0046	Aaron W. Plyler	MONROE PREPARED FOOD TAX.	*HF	Failed 2nd Reading	10-08-01	10-23-01
S0080	R. C. Soles, Jr.	TOWN OF BRUNSWICK ANNEXATION.	*HR	Ch. SL 2001-249	06-21-01	06-26-01
S0092	David W. Hoyle	VARIOUS LOCAL OCCUPANCY TAXES.	*HR	Ch. SL 2001-439	04-30-01	07-23-01
S0104	David W. Hoyle	REGULATE DEFERRED DEPOSIT.	*HA	Amend Adopted #8	08-12-02	08-28-02
S0123	Robert C. Carpen	SPECIAL OBLIGATION BONDS FOR WATER/SEWER.	*HR	Ch. SL 2001-238	05-15-01	05-31-01

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[redacted]37	Frank W. Ballanc	PRIVATE CORRECTIONAL OFFICERS.	*HR	Ch. SL 2001-378	05-08-01	05-15-01
[redacted]144	John H. Kerr III	STREAMLINED SALES AND USE TAX AGREEMENT.	*HR	Ch. SL 2001-347	06-05-01	07-16-01
S0157=	Aaron W. Plyler	DIETETICS/NUTRITION PRACTICE ACT.	*HR	Ch. SL 2001-342	04-18-01	07-19-01
S0162	Fletcher L. Hart	PROPERTY TAX AMENDMENTS.	*HR	Ch. SL 2001-139	04-17-01	05-14-01
S0165	Fletcher L. Hart	REVENUE LAWS TECHNICAL CHANGES.	*HR	Ch. SL 2001-414	04-30-01	08-16-01
S0181=	Oscar N. Harris	PASS-THROUGH ENTITY/ HOUSING TAX CREDIT.	*HR	Ch. SL 2001-431	09-12-01	09-19-01
S0195	Tony Rand	CRIMINAL RECORD CHECKS FOR NURSES.	*HR	Ch. SL 2001-371	05-07-01	07-19-01
S0206	Aaron W. Plyler	TOURIST DIRECTIONAL SIGN PROGRAM.	*HR	Ch. SL 2001-383	06-20-01	08-01-01
S0229	Patrick J. Balla	CAROLINA/KURE BEACH LIMITS.	*HR	Ch. SL 2001-57	04-11-01	05-01-01
S0236	David W. Hoyle	HFA BONDS.	*HR	Ch. SL 2001-185	05-17-01	05-24-01
S0247	John H. Kerr III	REALLOCATE CLEAN WATER BONDS/DEFER BOND ISSUE.	*HR	Ch. SL 2001-416	07-10-01	07-24-01
S0255=	Fletcher L. Hart	MIDLAND/ELON LOCAL ACT.	*HR	Ch. SL 2001-366	07-17-01	07-19-01
S0275	Fletcher L. Hart	CANADIAN DEALERS/ SALESMEN REGISTRATION.	*HR	Ch. SL 2001-225	05-08-01	05-31-01
S0311=	David W. Hoyle	HOUSING FINANCE AGENCY BONDS.	HR	Ch. SL 2001-181	05-17-01	05-24-01
S0327	Allen H. Wellons	WILSON DEANNEXATION.	*HR	Ch. SL 2001-161	04-25-01	05-08-01
[redacted]0348	Tony Rand	INCREASE CUMBERLAND OCCUPANCY TAX.	*HR	Ch. SL 2001-484	09-10-01	10-23-01
[redacted]353	John H. Kerr III	DOR DEBT COLLECTION CHANGES.	*HR	Ch. SL 2001-380	05-02-01	05-17-01
S0365	Eric Miller Reev	ELECTRONIC LISTING FOR PROPERTY TAXES.	*HR	Ch. SL 2001-279	04-26-01	06-26-01
S0381	Walter H. Dalton	BOSTIC CORPORATE LIMITS.	HR	Ch. SL 2001-43	03-29-01	05-01-01
S0395	Brad Miller	PLUMBING AND HEATING CONTRACTORS.	*HR	Ch. SL 2001-270	06-04-01	06-18-01
S0396	Brad Miller	ELECTRICAL CONTRACTORS.	*HR	Ch. SL 2001-159	04-18-01	05-14-01
S0400=	David W. Hoyle	NO SALES TAX ON CERTAIN PUBLICATIONS.	*HR	Ch. SL 2001-509	08-01-01	09-04-01
S0433	Aaron W. Plyler	FAIRVIEW INCORPORATED.	*HR	Ch. SL 2001-428	08-30-01	09-25-01
S0438	Linda Garrou	CLARIFY PUBLIC VEHICULAR AREA.	*HR	Ch. SL 2001-441	08-21-01	09-18-01
S0446=	William R. Purce	PHARMACY TECHNICIANS.	*HR	Ch. SL 2001-375	06-26-01	07-23-01
S0538	Scott Thomas	BILL LEE TWO-COUNTY PROJECTS.	*HR	Ch. SL 2001-94	04-24-01	05-08-01
S0551	Frank W. Ballanc	WELDON ANNEXATION AGREEMENT.	*HR	Ch. SL 2001-425	08-28-01	09-12-01
S0557=	John A. Garwood	MILLERS CREEK INCORPORATED.	*HR	Ch. SL 2001-45	04-04-01	05-01-01
S0628	Daniel G. Clodfe	OUT-OF-STATE CPAS/ FEES.	*HR	Ch. SL 2001-313	05-30-01	07-03-01
S0652	Kenneth R. Moore	AVERY OCCUPANCY TAX.	*H	Ref To Com On	08-14-01	

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				Finance		
S0653	Kenneth R. Moore	FOOTHILLS AND MITCHELL COUNTY LOCAL ACTS.	*HR	Ch. SL 2001-306	04-25-01	06-26-01
S0655	Oscar N. Harris	COATS CORPORATE LIMITS.	HR	Ch. SL 2001-47	04-11-01	05-01-01
S0657	Eleanor Kinnaird	CHAPEL HILL ANNEXATIONS.	*HR	Ch. SL 2001-348	07-25-01	08-02-01
S0660=	Eleanor Kinnaird	CHATHAM AUTO TAX FOR ECON. DEVELOPMENT.	*H	Ref To Com On Finance	10-08-01	
S0664	Aaron W. Plyler	UNION/MONROE PREPARED FOOD TAX.	*HF	Failed 2nd Reading	07-30-01	08-02-01
S0664	Aaron W. Plyler	UNION/MONROE PREPARED FOOD TAX.	*HF	Failed 2nd Reading	08-15-01	08-28-01
S0668	Charles W. Alber	BURGAW CHARTER REVISED.	*HR	Ch. SL 2001-247	05-10-01	06-14-01
S0677	Frank W. Ballanc	WELDON ANNEXATIONS.	HR	Ch. SL 2001-49	04-11-01	05-01-01
S0680	T. LaFontine Odo	LAWFUL FIREARM ACTIVITIES PROTECTED.	*H	Ref To Com On Judiciary II	08-01-01	10-08-01
S0718	Daniel G. Clodfe	LOCAL GOV. SPECIAL OBLIGATION BOND USE	*H	Re-ref Com On Finance	10-02-02	
S0721=	William R. Purce	OCCUPATIONAL LICENSING FEES & PER DIEM CHANGES.	*HR	Ch. SL 2001-493	10-22-01	10-30-01
S0748=	David W. Hoyle	BILL LEE ACT CHANGES-AB.	*HR	Ch. SL 2001-476	09-25-01	10-02-01
S0748=	David W. Hoyle	BILL LEE ACT CHANGES-AB.	*HR	Ch. SL 2001-476	10-10-01	10-18-01
S0817	Tony Rand	BUILDING CODE REVISIONS.	*HR	Ch. SL 2001-324	07-10-01	07-18-01
S0823	Tony Rand	PROMOTING NC GRAPE AND WINE INDUSTRY.	*HR	Ch. SL 2001-262	06-04-01	06-11-01
S0832	Tony Rand	SMALL BUSINESS CONTRACTOR INITIATIVE/ FUNDS.	*HR	Ch. SL 2002-181	12-06-01	09-30-02
S0842	Daniel G. Clodfe	BUSINESS ENTITY CHANGES.	*HR	Ch. SL 2001-387	07-26-01	08-02-01
S0860	Daniel G. Clodfe	INTERSTATE TRUST BUSINESS.	*HR	Ch. SL 2001-263	05-30-01	06-19-01
S0861=	William R. Purce	LICENSE BY CREDENTIALS/DENTISTRY.	*HR	Ch. SL 2002-37	06-19-02	07-03-02
S0888	Dan Robinson	NONRESIDENT LICENSE FEES.	*HR	Ch. SL 2001-91	05-02-01	05-03-01
S0890	Kay R. Hagan	MONEY TRANSMITTERS ACT.	*HR	Ch. SL 2001-443	08-23-01	09-10-01
S0904=	Wib Gulley	ENACT MORTGAGE LENDING ACT.	*HR	Ch. SL 2001-393	07-31-01	08-13-01
S0967	John H. Kerr III	VARIOUS MOTOR FUEL TAX CHANGES-AB.	*HR	Ch. SL 2001-205	04-30-01	05-22-01
$ S0968=	**John H. Kerr III**	**UNC NONAPPROPRIATED CAPITAL PROJECTS.**	***HR**	**Ch. SL 2001-463**	**10-03-01**	**10-09-01**
S0970	John H. Kerr III	GRAPE GROWERS COUNCIL FUNDS.	*HR	Ch. SL 2001-475	08-28-01	09-10-01
S1037	David W. Hoyle	NO AIR PMT. REQUIRED UNTIL FACILITY OPERATIONAL.	*H	Conf Com Appointed	07-31-02	08-08-02

'$' indicates the bill is an appropriation bill.
A bold line indicates the bill is an appropriation bill.
'*' indicates that the text of the original bill was changed by some action.
'=' indicates that the original bill is identical to another bill.

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
[redacted]054=	Wib Gulley	JUDICIAL CAMPAIGN REFORM ACT.	*HR	Ch. SL 2002-158	07-29-02	08-22-02
[redacted]062	Stephen M. Metca	SUBSTANCE ABUSE PROFESSIONALS.	HR	Ch. SL 2001-370	07-17-01	07-31-01
S1066	David W. Hoyle	AMEND APPRAISERS ACT.	*HR	Ch. SL 2001-399	07-19-01	08-08-01
S1114		BADIN CHARTER/NORMAN BOUNDARIES.	*HR	Ch. SL 2002-124	07-03-02	07-30-02
S1132		ELLENBORO DEANNEXATION.	HR	Ch. SL 2002-49	07-03-02	07-16-02
S1136		MARVIN/BRUNSWICK ANNEXATIONS	*HR	Ch. SL 2002-140	10-01-02	10-02-02
S1146		VARIOUS MUNICIPAL SATELLITE ANNEXATIONS.	*HR	Ch. SL 2002-121	08-26-02	08-28-02
S1160		REVENUE LAWS TECHNICAL CHANGES.	*HR	Ch. SL 2002-72	07-15-02	07-23-02
S1161		AMEND USE VALUE STATUTES AND OTHER TAX LAWS.	*HR	Ch. SL 2002-184	08-20-02	08-21-02
S1195		AVERY COUNTY OCCUPANCY TAX.	*HR	Ch. SL 2002-94	07-03-02	07-23-02
S1253=		AMEND POLLUTION ABATEMENT TAX EXCLUSION.	*HR	Ch. SL 2002-104	08-14-02	08-15-02
S1268		MONROE WH. LOCK/ NORWOOD UTIL./MT. GILEAD ANNEX	*HR	Ch. SL 2002-127	09-17-02	09-19-02
S1281		CERTAIN OCCUPATIONAL LICENSING BOARD CHANGES.	*HR	Ch. SL 2002-168	10-02-02	10-03-02
[redacted]1292		LOCAL SALES TAX ACCELERATION	*HR	Ch. SL 2002-123	06-18-02	07-17-02
[redacted]1292		LOCAL SALES TAX ACCELERATION	*HR	Ch. SL 2002-123	07-23-02	07-24-02
S1300		NEWTON VOLUNTARY SATELLITE ANNEXATION.	HR	Ch. SL 2002-50	07-03-02	07-16-02
S1346		EDEN ANNEXATION CONTRACTS.	*HR	Ch. SL 2002-74	07-11-02	07-23-02
S1357		AMEND DURHAM OCCUPANCY TAX PROVISIONS.	HR	Ch. SL 2002-36	07-02-02	07-16-02
S1407		CONTRACTS TO REIMBURSE FUEL TAX/ FUEL TAX CHG.	*HR	Ch. SL 2002-108	07-31-02	08-06-02
S1416		HOUSING TAX CREDIT CHNGS/ESTATE TAX CHNGS.	*HR	Ch. SL 2002-87	07-31-02	08-06-02
$ S1455		**SECURITIES FRAUD PROTECTION AND STUDY**	***HR**	**Ch. SL 2002-189**	**09-20-02**	**10-02-02**

'$' indicates the bill is an appropriation bill.
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'=' indicates that the original bill is identical to another bill.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee is/are presented:
By Representatives Allen, Buchanan, Luebke and Wainwright (Chairs) for the Committee on **FINANCE.**

The following bills are reported with an indefinite postponement report:

BILL NO.	SHORT TITLE	SPONSORS
H8	REPEAL GIFT TAX.	Lyons Gray
H11	RAISE HOMESTEAD EXEMPTION INCOME LIMIT.	Wilma M. Sherrill
H44	MODIFY INTANGIBLES REIMBURSEMENT.	Lanier M. Cansler
H50	LOCAL OPTION HOMESTEAD EXEMPTION.	John M. Rayfield
H53	EXEMPT CHILD CARE PROPERTY.	Verla C. Insko
H58	EXEMPT TOBACCO PAYMENTS FROM INCOME TAX.	Rex L. Baker
H61	INCREASE INTANGIBLES REIMBURSEMENT.	W. Franklin Mitchell
H68	DESERT STORM LICENSE PLATE.	R. Eugene Rogers
H73	DESERT STORM LICENSE PLATE.	Mia Morris
H99	LOCAL TAX MENU WITH VOTER APPROVAL.	Henry M. Michaux, Jr., R. Phillip Ha
H101	NONPROFIT SALES TAX REVISION.	Rex L. Baker
H102	PROPERTY TAX HOMESTEAD EXCLUSION.	Dewey L. Hill
H107	MOTORCYCLE SAFETY ACT.	Rex L. Baker
H111	GOVERNMENT SALES TAX EXEMPTION.	Gordon P. Allen
H124	PASS-THROUGH ENTITY/HOUSING TAX CREDIT.	Verla C. Insko
H145	TROUTMAN/CATAWBA SATELLITE ANNEXATIONS.	Mitchell S. Setzer
H166	NO GIFT TAX ON FAMILY FARMS.	J. Russell Capps
H180	EXPAND DEVELOPMENT ZONES.	E. Nelson Cole
H184	MAKE CAR TAX PROGRESSIVE.	Zeno L. Edwards, Jr.
H191	SELF-EMPLOYED DEDUCT HEALTH INS.	John W. Hurley, G. Wayne Goodwi
H220	U.S. NAVY SUBMARINER SPECIALTY PLATE.	Rick L. Eddins
H227	WORLD WAR II SPECIAL LICENSE PLATE.	W. B. Teague, Jr.
H276	ESTATE TAX ON MULTI-STATE PROPERTY.	R. Phillip Haire
H279	MODIFY DARE TRANSFER TAX.	William T. Culpepper, III
H281	19TH HOUSE DISTRICT LOCAL ACT-1.	Donald S. Davis
H312	NO SALES TAX ON FUNERALS.	John M. Rayfield
H323	CITY OF GREENSBORO LOCAL ACT 2.	Mary L. Jarrell
H364	PEMBROKE SATELLITE ANNEXATIONS.	Ronnie N. Sutton
H366	ARTWORK CONSERVATION FEES.	Daniel W. Barefoot
H379	BILL LEE ACT CHANGES.	William C. Owens, Jr.
H411	TAX CREDITS FOR GLEANING/DONATION OF PRODUCE.	Dewey L. Hill
H416	CREDIT FOR VALUE-ADDED AGRI BUSINESS.	Dewey L. Hill
H424	DCR ADMISSION FEES.	Alma S. Adams
H433	CONFORM PERSONAL TAX DEDUCT. AND EXEMPT TO IRC.	John M. Blust
H455	SHP REIMBURSEMENT FOR SPECIAL EVENTS.	W. Eugene McCombs
H489	SWIFT CREEK INCORPORATION.	Robert J. Hensley, Jr.
H513	EXPAND BANK DEDUCTION TO ALL.	Charles F. Buchanan
H552	OPTIONAL TWO YEAR LICENSE PLATES.	Cary D. Allred

H554	U.S. MILITARY VETERAN SPECIAL REG. PLATE.	Cary D. Allred
H572	TAX CITIZENS LIKE BUSINESS/WHITE GOODS.	Paul Luebke
H637	MODIFY FUEL TAX FORMULA.	James W. Crawford, Jr.
H711	TEACHER TAX CREDIT.	Gene G. Arnold
H751	PHARMACY TECHNICIANS.	Gordon P. Allen
H756	WASHINGTON TRANSFER TAX CHANGE.	R. Eugene Rogers
H773	MILLERS CREEK INCORPORATED.	R. Tracy Walker
H789	"FIRST IN FURNITURE" SPECIAL LICENSE PLATE.	Edgar V. Starnes
H795	"CHOOSE LIFE" LICENSE PLATE.	Mitch Gillespie
H796	FARM BALING EQUIPMENT TAX CHANGE.	Edd Nye
H832	DIETETICS/NUTRITION PRACTICE ACT.	Mary L. Jarrell
H836	DURHAM ZONING/CAPITAL FACILITIES FEES.	Paul Miller
H845	EXCLUDE PENSIONS FROM INCOME TAX.	Donald S. Davis
H848	INCOME TAX HEALTH CREDIT.	Gene G. Arnold
H850	CHARLOTTE ENTERTAINMENT TAX.	W. Edwin McMahan
H874	LAURINBURG OCCUPANCY TAX.	Douglas Y. Yongue
H878	BUNCOMBE ANNEXATION REFERENDUM.	Trudi Walend
H916	HOMESTEAD EXEMPTION INCREASE.	Fern Shubert
H926	MODIFY NEW HANOVER ROOM TAX USE.	Daniel F. McComas
H930	SAMPSON/CLINTON ROOM TAXES.	Larry Bell
H959	SALES TAX ON CERTAIN ELECTRICITY.	Lyons Gray
H975	NO SALES TAX ON FREE PUBLICATIONS.	Martin L. Nesbitt, Jr., Daniel T. Blue Mia Morris
H992	HOMEBUILDER RESPONSIBILITY.	Beverly M. Earle
H1014	CERTIFIED PROFESSIONAL MIDWIVES.	Mia Morris
H1057	LABOR COMMISSIONER FEE AUTHORITY.	W. Franklin Mitchell
H1059	RETURNABLE PALLETS TAX EQUALIZATION.	Pryor A. Gibson, III
H1064	SOME ELECTRICITY TAX EXEMPT.	Pryor A. Gibson, III
H1066	BROADBAND INTERNET TAX CREDIT.	Joe P. Tolson, Drew P. Saunders, Russell E. Tucker
H1086	ANIMAL WASTE OPERATORS' LATE FEE.	Russell E. Tucker
H1106	ENACT MORTGAGE LENDING ACT.	Walter G. Church, Sr.
H1110	NORTH CAROLINA TOURISM DEVELOPMENT ACT.	Beverly M. Earle, Daniel W. Barefoc R. Eugene Rogers
H1121	COASTAL RECREATIONAL FISHING LICENSE.	E. David Redwine, Pryor A. Gibson,
H1135	BLUE RIDGE PARKWAY FOUNDATION LICENSE PLATE.	Trudi Walend
H1176	ELECTRONIC PROPERTY TAX LISTING.	David M. Miner
H1181	EXPAND CALL CENTERS ELIGIBLE FOR BILL LEE ACT.	P. Wayne Sexton, Sr., E. Nelson Cc
H1292	TAXPAYER BILL OF RIGHTS.	John M. Blust
H1298	INCREASE COMMERCIAL UST FEES.	Pryor A. Gibson, III
H1302	LUST/EXTEND SUNSET/INCREASE TANK FEES.	Pryor A. Gibson, III
H1379	INCOME TAX THROWBACK RULE.	Verla C. Insko, Paul Luebke
H1383	HOUSING FINANCE AGENCY BONDS.	Gordon P. Allen
H1384	HFA BONDS.	Gordon P. Allen
H1396	FEES FOR CORPORATE CERTIFICATE OF EXISTENCE.	Henry M. Michaux, Jr.
H1409	VIDEO POKER REG. & ENFORCEMENT FEE.	G. Wayne Goodwin, Philip A. Badd
H1411	TAX INCENTIVES FOR ALTERNATIVE FUEL VEHICLES.	Joe P. Tolson
H1417	EARNED INCOME TAX CREDIT/INCREASE UPPER RATES.	Verla C. Insko, Paul Luebke
H1422	BACK-TO-SCHOOL SALES TAX HOLIDAY.	Flossie Boyd-McIntyre
H1423	SPEECH PATHOLOGISTS/AUDIOLOGISTS FEES.	Edd Nye

H1425	TECHNOLOGICAL DEVELOPMENT TAX CREDIT.	Gordon P. Allen
H1428	LOCAL OPTION TRANSFER TAX.	Paul Luebke
H1429	SUPPORT EDUCATION/NEW UPPER-INCOME TAX BRACKET.	Paul Luebke
H1432	ADDITIONAL TRANSIT AUTHORITY REGISTRATION TAX.	Verla C. Insko
H1433	REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	Walter G. Church, Sr.
H1434	BILL LEE TIER DESIGNATION CHANGE-1.	Trudi Walend
H1435	BILL LEE TIER DESIGNATION CHANGE-2.	Trudi Walend
H1436	CCRC LEASED PROPERTY.	Art Pope
H1438	EXEMPT CERTAIN MILITARY PAY FROM INCOME TAX.	Alex Warner
H1440	REFORM BILL LEE ACT - 1.	Paul Luebke
H1442	REVISE CIGARETTE MANUFACTURER CREDIT.	Paul Luebke
H1444	EXPAND CHILD HEALTH INSURANCE.	Paul Luebke
H1446	ELIMINATE VEHICLE PROPERTY TAX.	Cary D. Allred
H1450	NO TAX ON HOMES/EQUAL SCHOOL FUNDING.	J. Sam Ellis
H1506	GROCERY STORE CREDIT - DEVELOPMENT ZONE.	Thomas E. Wright
H1507	CIGARETTE TAX FOR PUBLIC EDUCATION.	Robert J. Hensley; Jr.
H1509	REVENUE CHANGES/EXEMPT UNC TRUST PROPERTY.	L. Hugh Holliman, Paul Luebke, William L. Wainwright
H1528	REPEAL SALES TAX ON FERTILIZER AND SEED.	Cary D. Allred
H1531	CIGARETTE TAX FOR PUBLIC SCHOOLS.	Paul Miller
H1535	BUTNER TAX RATE.	James W. Crawford, Jr.
H1536	IRC UPDATE.	Art Pope, Gene G. Arnold, Lyons G Fern Shubert
H1547	CIGARETTE TAX $1 A PACK.	Henry M. Michaux, Jr.
H1548	APPLY SALES TAX TO CERTAIN VEHICLES.	Henry M. Michaux, Jr.
H1549	EITC/SALES TAX ON MACHINERY.	Henry M. Michaux, Jr.
H1550	REPEAL CIGARETTE EXPORT TAX CREDIT.	Henry M. Michaux, Jr.
H1551	CONFORM TAX ON BANKS.	Henry M. Michaux, Jr.
H1554	CASINO NIGHTS FOR NONPROFITS.	William C. Owens, Jr.
H1563	HAZARDOUS WASTE GENERATOR FEE INCREASE.	Joe Hackney
H1571	ANSON LOCAL SALES TAX FOR MEDICAID.	Pryor A. Gibson, III
H1591	MENTAL HEALTH REVENUE.	Mark F. Crawford
H1592	MEDICAID SUPPLEMENT ACT.	Mark F. Crawford
H1596	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	Mark Hilton
H1601	CIGARETTE TAX 50 CENTS A PACK.	Ruth M. Easterling
H1603	IRC UPDATE.	Paul Luebke, Gordon P. Allen, William L. Wainwright
H1606	RAISE ALCOHOL/CIGARETTE REV. TO SAVE SERVICES.	Verla C. Insko, Jennifer Weiss, Pau
H1630	NASCAR DRIVER THEME SPECIAL PLATES.	Andrew T. Dedmon, G. Wayne Goo
H1631	HMONG VETERANS LICENSE PLATE.	Bobby H. Barbee, Sr., Pryor A. Gibs
H1632	SALES TAX CHANGES/MEDICAID.	Russell E. Tucker
H1642	CONFORM TAX RATE ON CERTAIN VEHICLES.	Jennifer Weiss, Paul Luebke, Verla
H1643	CLOSE BANK TAX LOOPHOLE TO SAVE EDUCATION.	Jennifer Weiss, Verla C. Insko, Pau
H1644	INCOME SURTAX TO SAVE EDUCATION AND SERVICES.	Paul Luebke, Verla C. Insko, Jennif
H1645	CLOSE CORPORATE LOOPHOLES TO SAVE EDUCATION.	Paul Luebke, Jennifer Weiss, Verla
H1656	TEMP. REVENUE INCREASE TO PROTECT CHILDREN.	Henry M. Michaux, Jr.
H1669	SUNSET HARBOR INCORPORATED.	E. David Redwine
H1687	ARCHDALE OCCUPANCY TAX.	Jerry C. Dockham
H1693	EITC/SALES TAX ON FOOD.	Pryor A. Gibson, III
H1694	CLOSE CORPORATE TAX LOOPHOLES.	Paul Miller

H1717	SALES TAX ON CONSTRUCTION MATERIALS.	James W. Crawford, Jr.
H1718	AUTHORIZE INTERSTATE ABC SHIPMENT.	Michael Harrington
H1725	PITTSBORO DEANNEXATION.	Joe Hackney
H1729	ALLOW DIRECT ABC SHIPMENT.	Michael Harrington
H1732	GREENSBORO VEHICLE TAX.	Alma S. Adams
H1737	GOVERNOR'S EFFICIENCY STUDY COMMISSION.	William C. Owens, Jr.
~~H1753~~	~~BILL LEE ACT CHANGES.~~	~~Paul Luebke~~
H1754	LIQUOR TAX/FUNDS FOR MEDICAID DRUG COPAYMENT.	Paul Miller
H1761	FINANCING PARKS, RECREATION, AND HERITAGE.	Pryor A. Gibson, III, Joe Hackney, Gordon P. Allen, Daniel F. McComa
H1762	ENFORCE MASTER SETTLEMENT AGREEMENT.	E. Nelson Cole

Submitted by the Chairs of the House Committee on Finance on October 2, 2002.

Representative Gordon Allen

Representative Monroe Buchanan

Representative Paul Luebke

Representative William Wainwright

MINUTES
HOUSE COMMITTEE ON FINANCE

June 11, 2002

The House Committee on Finance met on Tuesday, June 11, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen and Monroe Buchanan, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; and Representatives Martha Alexander, Philip Baddour, Russell Capps, Leslie Cox, Pete Cunningham, Michael Decker, Andrew Dedmon, Rick Eddins, Zeno Edwards, Pryor Gibson, Lyons Gray, Joe Hackney, Bill Hurley, Linda Johnson, Daniel McComas, Eugene McCombs, Mia Morris, Art Pope, John Rayfield, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble.

House Bill 1490, AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR was before the committee for consideration.

Trina Griffin, Committee Counsel, explained the bill.

Representatives Gibson, Gray, Goodwin, and Baddour, as primary sponsors, spoke on the bill.

North Carolina League of Municipalities counsel, Andrew L. Romanet, Jr. spoke in favor of the bill.

North Carolina Association of County Commissioners, James B. Blackburn, III, spoke in favor of the bill.

Franklin Freeman, Senior Assistant for Governmental Affairs of the Governor's Office, spoke on the bill stating that it was acceptable to the Governor and that he does not feel that a constitutional amendment would be appropriate.

Representative Baddour was recognized for an amendment. He explained the amendment and moved for its adoption. Motion carried and the amendment was adopted.

The Chairman recognized Representative Shelly Willingham as a new member of the Finance Committee, replacing former Representative Toby Fitch.

Representative Buchanan made the motion that the amendment be rolled into a committee substitute and be given a favorable report, unfavorable to the original bill. Motion carried.

There being no further business, the Chair adjourned the meeting at 9:30 A.M.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

Attachments:
House Bill 1490
Baddour amendment
Committee substitute for House Bill 1490
Committee report
Visitor Registration Sheet

AGENDA
House Finance Committee

June 11, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1490 **Secure Local Revenues – Rep. Gibson**

ADJOURNMENT

VISITOR REGISTRATION SHEET

FINANCE — June 11, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Matthews	DOT
Mike Dahl	TOWN OF ELON / NCLM
Charles Archer	NCLM
Andy Romanet	NCLM
Jim Blackburn	NC Association of County Commissioners
Paul Meyer	" "
Bob Cauble	City of Charlotte
Maurice Green	Charlotte-Mecklenburg Schools
Fred Niehoff	Mayor - City of Hendersonville
Dan Hubart	DOC
Tony Hoffman	NC Farm Bureau

VISITOR REGISTRATION SHEET

FINANCE — June 11, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Joyce	Electric Cooperatives
Esthernie Davis	Electricities
Julie Woodson	NCCBI
McKinley Wooten	DOA
[illegible]	City of Newton
Ed Burchins	" "

VISITOR REGISTRATION SHEET

FINANCE — June 11, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Stegall	Professional Educators of N.C.
Megan Stegall	" " " "
Paul Tumm	NCDENR
Beau Mills	NCLM
Ashley Heaton	NC Bar Assoc.
Mark Deason	Capitol Group
Catherine Davis	ElectriCities
Franklin Freem	Gov. office
Steve Hoffman	NCSBA

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1490 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1490
PROPOSED COMMITTEE SUBSTITUTE H1490-PCS4216-SV-65

Short Title: Secure Local Revenues. (Public)

Sponsors:

Referred to:

May 30, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of

the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 6. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 7. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1490

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

H1490-ASV-81 [v.1]

Date _____,2002

Comm. Sub. [NO]
Amends Title [NO]
HB 1490

Representative Baddour

moves to amend the bill on page 3, line 31, by rewriting the line to read:

"**SECTION 7.** The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 8. This act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1490

Short Title:	Secure Local Revenues.	(Public)
Sponsors:	Representatives Gibson, Goodwin, Baddour, Gray (Primary Sponsors); Allen, Allred, Baker, Barbee, Barefoot, Barnhart, Bell, Blust, Brubaker, Buchanan, Capps, Carpenter, Church, Clary, Coates, Cole, Cox, M. Crawford, Creech, Culp, Cunningham, Decker, Esposito, Fox, Gillespie, Gulley, Hackney, Hall, Harrington, Hiatt, Hilton, Holliman, Hurley, Insko, Jeffus, Johnson, Justus, Kiser, Lucas, Luebke, McComas, McCombs, McLawhorn, McMahan, Morris, Nesbitt, Nye, Owens, Pope, Preston, Rayfield, Redwine, Saunders, Sherrill, Shubert, Smith, Starnes, Thompson, Tucker, Underhill, Wainwright, Walend, Walker, Warner, Warren, Warwick, Weiss, C. Wilson, G. Wilson, and Yongue.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 30, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 6. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy

of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1490:
Secure Local Revenues

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Reps. Gibson, Goodwin, Baddour, and Gray
Date:	June 11, 2002		
Version:	1st Edition	**Summary by:**	Trina Griffin Committee Counsel

SUMMARY: ***House Bill 1490 secures local revenues from being withheld by the Governor in the following ways:***

- ***It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus removing those funds from the scope of the Governor's constitutional budgetary authority.***
- ***It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized by an act of the General Assembly.***

The act is effective when it becomes law.

BILL ANALYSIS:

Sections 1 through 5 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

Section 1 - Beer and wine tax.

Section 2 - Franchise gross receipts tax.

Section 3 - Piped natural gas tax.

Section 4 - Sales tax on telecommunications.

Section 5 - Powell Bill funds.

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 6 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State:

(1) He has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period; and

(2) He has been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion *(see IV. below)*, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

CURRENT LAW & BACKGROUND:

I. **Sources of Local Revenue** – The State provides financial aid to local governments through reimbursement programs and shared tax revenues.

A. *Local Government Reimbursements* – State reimbursements are amounts distributed to local units to compensate them for revenue lost as the result of the removal by the General Assembly of property from the local sales and use tax base, the property tax base, or the intangibles tax base. The reimbursement programs include reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the homestead exemption from property tax, and the repeal of local sales and use taxes on food purchased with food stamps. Section 34.15 of the Appropriations Act of 2001 (S.L. 2001-424, Section 34.15) repeals all of the State reimbursement payments to local governments in exchange for granting local governments the authority to levy an additional ½-cent sales tax, effective beginning with the 2003-2004 fiscal year.

B. *Shared Tax Revenues* - The State also shares a portion of certain tax revenues with local governments. The distribution formulas and any applicable restrictions on the use of the funds for each of the shared tax revenues are set out in the statutes. The shared revenues include the levy of the following taxes:

- Beer and wine taxes[1]
- Franchise gross receipts tax[2]
- Piped natural gas tax[3]
- Sales tax on communications[4]
- Powell bill funds[5]

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[1] Cities and counties in which beer and wine may be sold receive a portion of the State excise tax levied on beer and wine. They receive a percentage of the net amount of excise taxes collected, and the percentage depends on the type of beverage sold: 23 ¾% for beer, 62% for unfortified wine, and 22% for fortified wine. The local governments that share in the proceeds do so on a per capita basis, with counties receiving credit for their nonmunicipal population only.

[2] The State levies a gross receipts tax on electric power companies at a rate of 3.22%. From these proceeds, each city or town is entitled to an amount equal to the proceeds of a tax of 3.09% of gross receipts arising from sales within that city or town.

[3] The State levies an excise tax on piped natural gas, and the rate is based on the monthly volume of natural gas received by the final user. The rate decreases as the amount of therms of piped gas consumed in a month increases. Cities receive 50% of the proceeds of the tax attributable to that city.

[4] The State imposes a 6% sales tax on telecommunications. The cities receive 18.26% of the net proceeds of the taxes collected minus a "freeze deduction" amount totaling $2,620,948.

[5] North Carolina's state gasoline tax is 17 ½ cents per gallon, plus the greater of 7% of the average wholesale price or 3.5 cents per gallon. Of this, an amount equal to the proceeds of 1.75 cents per gallon plus an additional 6.5 percent of the net proceeds of the North Carolina Highway Trust Fund is distributed among North Carolina's cities and towns. The legislation that first established this distribution system is known as the *Powell Bill*, after its principal sponsor, and the monies distributed to the cities and towns are generally known as Powell Bill funds. The use of these funds by municipalities is restricted to maintaining, repairing, constructing, reconstructing or widening streets, sidewalks, bridges, curbs and gutters, bikeways, and other necessary appurtenances within the corporate limits of the municipality.

II. **Withholding of Certain Local Revenues by the Governor** - For the last two years, the Governor has withheld reimbursement funds from local governments, and he has recommended suspending additional reimbursement funds for fiscal year 2002-2003 as well. Specifically, in fiscal year 2000-2001 the Governor placed in escrow $95 million of inventory tax reimbursement funds, representing one-half of the total annual payment, in anticipation of a budget shortfall. These funds were later released, however, to local governments. In fiscal year 2001-2002, the Governor again withheld $95 million in inventory tax reimbursement funds plus $114 million in state-shared taxes and the homestead reimbursement in order to balance the budget as of June 30, 2002. For fiscal year 2002-2003, the Governor has proposed suspending $333.4 million in local government reimbursements, including reimbursements for the intangibles tax, the inventory tax, the sales and use tax on food purchased with food stamps, and the homestead exemption.

III. **Constitutional Authority to Withhold Funds** - By withholding these funds despite the statutory directive to distribute the funds to local governments, the Governor has invoked his constitutional authority pursuant to Section 5(3) of Article III of the North Carolina Constitution to balance the budget. Section 5(3) of Article III of the North Carolina Constitution sets out the Governor's budgetary duties. Specifically, it directs the Governor to prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. Furthermore, it provides that the State may not operate at a deficit during the fiscal period covered by a budget. To insure that the State does not incur a deficit, the Constitution requires the Governor to continually survey the collection of revenue. If, as a result of his surveys, he determines that actual receipts for the fiscal period, when added to the surplus remaining in the State Treasury will not be sufficient to pay budgeted expenditures, the Governor must effect the necessary economies in State expenditures to keep the deficit from occurring. Arguably, the distribution of monies to local governments is a "State expenditure," and the Governor's constitutional obligation to maintain a balanced budget overrides the statutory directive to distribute the funds.

IV. **Attorney General Opinion** – While the Attorney General has not issued an opinion specifically addressing the Governor's authority to withhold local government reimbursement money or shared tax revenue, the Attorney General has recently issued an advisory opinion regarding the transfer of money from the Wireless Emergency Telephone System Fund to the General Fund in a budget emergency.[6] The Wireless Fund is funded by the levy of a fee on the bills of wireless telephone consumers. The Wireless 911 Board administers the Fund, and is required to deposit all revenues derived from the service charge into a separate fund established with the State Treasurer. The Fund is used to provide enhanced 911 service to wireless customers. In the opinion, the Attorney General concluded that the Governor's authority to transfer funds from the Wireless Fund to an escrow account to avoid a budget deficit is "necessarily implied from his constitutional duty to balance the budget and from his statutory duty to supervise the funds of all State agencies." He further concluded that the "statutory limitation on the use of funds necessarily must yield to the Governor's constitutional obligation to balance the budget." The opinion did not address whether the monies in the Wireless Fund were a "State expenditure" for purposes of Section 5(3) of Article III of the Constitution, but it did clarify that the Governor's authority is not diminished by the fact that the funds are revenues from fees and not budget allocations made by the General Assembly.

[6] N.C. Att'y Gen. Op. Ref. 503, dated June 29, 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1490 (1st Edition)

SHORT TITLE: Secure Local Revenues

SPONSOR(S): Representative Gibson

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	* See Assumptions and Methodology *				
Local Governments	*See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of State Budget and Management, Office of the Governor, Local Governments.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill attempts to limit the Governor's ability to withhold the local portion of revenues shared with cities and counties by declaring these funds local revenue. Specifically Section 1 addresses beer and wine taxes, while Section 2 discusses the franchise tax on electricity. Section 3 considers the tax on piped natural gas. Section 4 addresses the tax on telecommunications. Section 5 considers the Highway Fund and Highway Trust Funds allocated as Powell Bill funds. Section 6 recognizes the need for local governments to be able to rely on the funds mentioned in Sections 1 – 5, and adds intent language to clarify that the funds committed or appropriated by the legislature for local governments shall not be reduced unless the governor has exhausted all other sources of revenue for the state. It also explicitly recognizes that the state is prohibited from taking local revenues.

BACKGROUND: In the spring of 2001, as a result of substantial budget shortfall, the governor escrowed $95.0 million of reimbursement payments to local governments. This payment is made as a reimbursement for revenues lost by the state's repeal of the property tax on various inventories. The funds were placed in an escrow account in case they were needed to balance the state budget on June 30, 2001. These funds were later released to the local units. In 2002, again facing a difficult fiscal situation, Governor Easley escrowed the spring inventory tax reimbursement to local governments. This $95.0 million was again placed in a special account to hold in case it was needed to balance the state

budget in 2002. At the same time the governor announced he was holding an additional $114.0 million in reimbursements and shared revenues to secure his ability to balance the state budget. The $114 million included the following estimated amounts:

Fund Type	*Amount Withheld*
Franchise Utility Tax	
March Distribution	35.6
June Distribution	25.0
Piped Natural Gas	
March Distribution	6.9
June Distribution	11.8
Beer and Wine Tax	26.8
Homestead Exemption	7.9
TOTAL	**114.0**

These amounts remain in escrowed funds for potential use for balancing the 2001-02 state budget.

ASSUMPTIONS AND METHODOLOGY: This legislation has no direct impact on the budgets passed by the General Assembly, as these shared revenues have not been used in the legislative process for state expenditures. However, the legislation could limit the options available to the Governor. Because of the lack of clarity about what actions will be required of the Governor in future years, and the impact this particular legislation will have on the individual's decisions, no fiscal estimate is possible on the impact of the legislation.

SOURCES OF DATA: Office of State Budget and Management.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: James D. Johnson

DATE: June 7, 2002

MINUTES
HOUSE COMMITTEE ON FINANCE

JUNE 12, 2002

The House Committee on Finance met at 8:30 a. m. on Wednesday, June 12, 2002, in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Hackney, Holliman, Hurley, Johnson, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, and Cunningham. The following Sergeant-at-Arms staff were present: Bob Fowler, Bill Freeman, Dusty Rhoades, and Walter Spell. Staff persons present included: Cindy Avrette, Trina Griffin, Martha Walston, Richard Bostic, Linda Millsaps, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Visitor Registration Sheet and Agenda are attached and incorporated as a part of these minutes. Chairman Allen called the meeting to order and recognized Henry Neese, Andrew Batchelor, Dan Mercer, and Zach Fentress, who were serving as Pages.

Representative Jim Crawford was recognized to explain HB 1517, A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF LITTLETON. Representative Hurley offered an amendment to the bill that deleted the word "Town" and substituted the word "Board" on Page 3, Line 16. Upon motion by Representative Buchanan, the Proposed Committee Substitute (PCS) was adopted for discussion. Representative Womble moved to give the PCS a favorable report, and an unfavorable report to the original bill. The Committee voted in favor of his motion. Copies of the Committee Report, PCS, Amendment, Bill, and Bill Analysis are attached as part of these minutes.

The next order of business was HB 1530, A BILL TO BE ENTITLED AND ACT TO ALLOW THE TOWN OF TABOR CITY TO LEVY SPECIAL ASSESSMENTS FOR STREET OR SIDEWALK IMPROVEMENTS WITHOUT PETITION. Representative Hill was recognized to explain the bill. In response to questions during the discussion, Representative Hill stated that the bill had not been through the Local Government Committee, and at this time, the cost per foot was not known. Upon the motion of Representative Hurley, the Committee voted for a favorable report. Copies of the Committee Report, Bill and Bill Summary are attached as part of these minutes.

Representative Hill was recognized to explain HB 1523, A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS. Representative Hill asked Martha Walston, Committee Counsel, to explain the bill. Ms. Walston directed the committee's attention to the Bill Analysis. Representative Luebke offered an amendment to the bill that amended the bill on page 3, lines 42 and 43. Upon the motion of Representative Luebke, the amended bill was adopted for discussion. Representative Hackney asked how automobile values were established. Linda Millsaps of Fiscal Research responded that the counties used the values provided by TEC Data Systems. In response to questions regarding the 30-day notice of appeal, Mr. Johnny Bailey, Director of the Property Tax Division of the Department of Revenue, stated that the 30 days began from the date of the notice and included 30 working days. Representatives Capps, Hackney, and Wainwright expressed concerns for Section 1 of the bill, which authorized the tax collector to impose $25.00 or 10% of the amount of the check, whichever was greater, subject to a maximum of $1000.00. Pete Rodda, Forsyth County Tax Assessor and Collector, stated that the purpose of the penalty was to discourage persons from writing bad checks when paying their taxes. Sabra Faires, Assistant Secretary of Tax Administration for the Department of Revenue, stated that the current law authorized the Department of Revenue to impose 10% of the amount of the check, subject to a minimum of $1.00 and a maximum of $1000.00. Other committee members expressed concern with Section 1 of the Bill, and Representative Luebke recommended that the committee continue the discussion of the bill at a later date, which would allow the bill sponsor and staff to prepare an amendment to address the concerns expressed by committee members. Representative Hill agreed, and the bill was withdrawn and would be scheduled for discussion later. The Luebke Amendment, Bill, Bill Analysis, and Fiscal Note, are attached as part of these minutes.

Representative Allen was one of the Primary Sponsors of HB 1521and HB 1520. He asked Representative Luebke to chair the meeting for the discussion of those bills.

Staff Attorney, Cindy Avrette, was recognized to explain HB 1521, AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES TO THE FEDERAL MOBILE TELECOMMUMICATIONS SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR OTHER TELECOMMUNICATIONS SERVICES. Ms. Avrette explained that this bill conforms North Carolina's sourcing of mobile telecommunications services to the federal Mobile Telecommunications Sourcing Act. Representative Buchanan moved for a favorable report and the motion carried. Copies of the Bill and Bill Analysis are attached as part of these minutes.

Representative Allen was recognized to explain HB 1520, AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS. There was a Proposed Committee Substitute which amended the bill on Page 2 Line 10 by changing "this Article" to read as "this Part". Representative Buchanan moved for the adoption of the PCS. The PCS was adopted for discussion. Representative Luebke recognized those persons in the audience who had asked to speak on the bill. Monica Doss, President of the Council of Entrepreneurial Development, Peter Young, CEO of AlphaVax, Inc., and Joan Myers, President of NCEITA, expressed their support of the credit. Ms. Doss reiterated that the credit is the only tax incentive specifically targeted to small business startups. Ms. Myers stated that there were four keys to sustaining and growing knowledge-based jobs and companies: (1) strong universities for research and workforce, (2) a critical mass of established technology companies, (3) available capital, and (4) an entrepreneurial environment. She also stated that the QBV would encourage knowledge-based companies to grow in or to relocate to North Carolina. Representative Womble asked for a definition of a small entrepreneurial company. Ms. Doss responded that the credit is based on the type of activity. Mr. Sam Taylor, Executive Director of the NC Bio-Sciences Organization, stated that the qualifier is a Five Million Dollar revenue cap, and you can only take the credit if you had more revenue than that in your first year of existence. Don Hobart of the Department of Commerce stated that the Economic Development Board and the Department of Commerce supported the credit. Representative Hill made a motion for a favorable report. Representative Pope spoke in opposition to the bill. He did not feel it was right to expand a specialized tax credit for some new investments and venture capital startups when all other businesses were taxed. He did not support favoring new businesses over existing businesses. He further stated that with the accelerated taxation on new investments by the Senate Budget Bill, there would be less revenue in later years when the businesses eventually did take the depreciation. The impact of this tax credit for next year's budget would be Six Million Dollars. Representative Capps expressed concern with the provision of the credit regarding "qualified grantee businesses". He suggested that the committee make the change now to correct the constitutional concern. Mr. Sam Taylor, Executive Director of the NC Bio-Sciences Organization, stated there was a uniformity question regarding the Deadwood case, which was heard by the Court of Appeals. This case was currently before the Supreme Court. The advocates for the credit had concluded that they would advocate for a continuation of the credit as it is, and wait to see how the Deadwood case is decided. The uniformity question would be resolved at the time of the Supreme Court's decision. Representative Gibson stated that this bill was about incentive and not about tax credit. He thought that more needed to be done, and he supported the bill. Representative Willingham stated that he would support the bill, but he expressed the following concerns: (1) The limited kinds of companies that could use the credit; (2) The companies were in metropolitan areas and not in rural areas such as eastern North Carolina; and (3) We need to continue to support the credit, but we need to look at how to make it better.

Due to the hour, Chairman Luebke suggested that the discussion of HB 1520 continue at another meeting. House Bills 1509 and 1510 were not discussed in this meeting and would be heard at another time. Representative Luebke announced a meeting on Thursday, June 13, and adjourned the meeting at 9:50 a.m.

Respectfully submitted,

Representative Gordon Allen
Presiding Chair

Blinda Edwards
Committee Assistant

VISITOR REGISTRATION SHEET

FINANCE — June 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Camille Stell	KCLH
[signature]	NC BIO
Ed TURLINGTON	Brooks Pierce
Nil HEINKE	NCEITA
Peter Young	AlphaVax
JOAN MYERS	[signature]
Ken MeHon	Alley Associates, Inc
Sharon Matthews	DOT - DMV
Bob Gillam	Public Staff - NCUC
DAVID BARNES	Poyner + Spruill LLP
[signature]	Moore Van Allen
Angie Harris	MTE

VISITOR REGISTRATION SHEET

FINANCE — June 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Pomeranz	NCDOR
Sam McEwen	NCDOR
Sam Taylor	NCBIO
Jim Blackburn	NC Association of County Commissioners
John McKay	Gov Office
Melissa McM	CED
Jason Rabb	CED
Kim Hibbard	NCLM
John Baily	NCDDA
Pete Rodda	Forsyth County Tax Assessor/Collector
Mary Katherine Hackney	Intern - Rep Hackney
Letitia Withrow	NC Statewatch

VISITOR REGISTRATION SHEET

FINANCE — June 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrea Schrag	Intern, Rep. Alexander
Sabra Faires	N.C. Dept. of Revenue
Ashley Huffstetler	The Capitol Group
Paul Lyon	OSBM
Ashley Huston	NC Bar Assoc.
Michelle Frazier	NC Bar Assoc.
Hal Miller	NCACCT
Bill Spencer	NCDOR
Andy Sabol	NCDOR
Brian Francis	Meck County
Helen Lyon	Meck Co. DSS

VISITOR REGISTRATION SHEET

FINANCE — June 12, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe Gagnon	NC Sierra Club
Brock Winstead	NC Sierra Club
Shayna Watts	lobbyist Atty Anne Winner

AGENDA

House Finance Committee

June 12, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1509 Revenue Administrative Changes – Rep. Holliman (Revenue Laws)

HB 1510 Icard Fire Tax Rate – Rep. Buchanan

HB 1517 Littleton Charter – Rep. Crawford

HB 1520 Extend Qualified Business Venture Tax Credit – Rep. Allen (Revenue Laws)

HB 1521 Conform Mobile Telecommunications Sourcing – Rep. Allen (Revenue Laws)

HB 1523 Amend Property Tax Laws – Rep. Hill (Revenue Laws)

HB 1530 Tabor City Assessments – Rep. Hill

ADJOURNMENT

6/12

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1517 A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF LITTLETON.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1517
PROPOSED COMMITTEE SUBSTITUTE H1517-PCS7376-LA-68

Short Title: Littleton Charter. (Local)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF LITTLETON.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

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

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

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

"ARTICLE II. GOVERNING BODY.

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

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

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

"Section 2.4. **Mayor Pro Tempore.** In accordance with general law, the Board shall elect one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability.

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

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

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

"ARTICLE III. ELECTIONS.

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

"Section 3.2. **Election of Mayor.** At the regular municipal election in 2001, and quadrennially thereafter, a Mayor shall be elected to serve a term of four years.

"Section 3.3. **Election of Commissioners.** At the municipal election to be held in 1999, the three candidates for Commissioner who receive the highest number of votes shall be elected for four-year terms and the two candidates who receive the next highest number of votes shall be elected for two-year terms. At the regular municipal election in 2001, and quadrennially thereafter, two Commissioners shall be elected to four-year terms. At the regular municipal election in 2003, and quadrennially thereafter, three Commissioners shall be elected to four-year terms.

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

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the mayor-council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct.

"Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Section 4.4. **Tax Collector.** The Board shall appoint a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Board.

"Section 4.5. **Other Administrative Officers and Employees.** The Board may authorize other positions to be filled by appointment and may organize the Town government as deemed appropriate, subject to the requirements of general law."

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

SECTION 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools in the Town, or any acts validating, confirming, approving, or legalizing official actions, proceedings, contracts, or obligations of any kind.

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

Chapter 175 of the Public Laws of 1876-77.
Chapter 126 of the Private Laws of 1883.
Chapter 171 of the Private Laws of 1893.
Chapter 465 of the Public Laws of 1905.
Chapter 30 of the Private Laws of 1905, except sections 1, 2, and 3.
Chapter 56 of the Public Laws of 1907.
Chapter 153 of the Private Laws of 1907.
Chapter 138 of the Public Laws of 1909.
Chapter 116 of the Private Laws of 1911.
Chapter 120 of the Private Laws of 1921, Extra Session.
Chapter 939 of the 1947 Session Laws.
Chapter 763 of the 1953 Session Laws.

Chapter 399 of the 1965 Session Laws.
Chapter 106 of the 1969 Session Laws.
Chapter 601 of the 1973 Session Laws.
Chapter 11 of the 1998 Session Laws.

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

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

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

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

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

SECTION 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute that most clearly corresponds to the statutory provision that is superseded or recodified.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1517

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

H1517-ALA-58 [v.2]

Date June 12 ,2002

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

Representative Hurley

moves to amend the bill on page 3 line 16

by deleting the word "Town" and substituting the work "Board".

SIGNED Bill Hurley
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1517

Short Title:	Littleton Charter.	(Local)
Sponsors:	Representatives J. Crawford; Allen and Hurley.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF LITTLETON.

"ARTICLE I. INCORPORATION, CORPORATE POWERS AND BOUNDARIES.

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

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

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

"ARTICLE II. GOVERNING BODY.

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

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

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

"Section 2.4. **Mayor Pro Tempore.** In accordance with general law, the Board shall elect one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability.

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

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

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

"ARTICLE III. ELECTIONS.

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

"Section 3.2. **Election of Mayor.** At the regular municipal election in 2001, and quadrennially thereafter, a Mayor shall be elected to serve a term of four years.

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

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the mayor-council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct.

"Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Section 4.4. **Tax Collector.** The Town shall appoint a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Board.

"Section 4.5. **Other Administrative Officers and Employees.** The Board may authorize other positions to be filled by appointment and may organize the Town government as deemed appropriate, subject to the requirements of general law."

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

SECTION 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools in the Town, or any acts validating, confirming, approving, or legalizing official actions, proceedings, contracts, or obligations of any kind.

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

Chapter 175 of the Public Laws of 1876-77.
Chapter 126 of the Private Laws of 1883.
Chapter 171 of the Private Laws of 1893.
Chapter 465 of the Public Laws of 1905.
Chapter 30 of the Private Laws of 1905, except sections 1, 2, and 3.
Chapter 56 of the Public Laws of 1907.
Chapter 153 of the Private Laws of 1907.
Chapter 138 of the Public Laws of 1909.
Chapter 116 of the Private Laws of 1911.
Chapter 120 of the Private Laws of 1921, Extra Session.
Chapter 939 of the 1947 Session Laws.
Chapter 763 of the 1953 Session Laws.

Chapter 399 of the 1965 Session Laws.
Chapter 106 of the 1969 Session Laws.
Chapter 601 of the 1973 Session Laws.
Chapter 11 of the 1998 Session Laws.

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

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

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

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

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

SECTION 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and that provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute that most clearly corresponds to the statutory provision that is superseded or recodified.

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

HOUSE BILL 1517:
Littleton Charter

BILL ANALYSIS

Committee: House Finance
Date: June 11, 2002
Version: 1st Edition

Sponsor: Rep. Crawford
Analysis by: Martha Walston
Committee Counsel

SUMMARY: House Bill 1517 is a local bill that revises and consolidates the Charter of the Town of Littleton in Halifax County. The act is effective when it becomes law.

BILL ANALYSIS:

ARTICLE I of the act describes the incorporation, powers, and corporate limits of the Town

ARTICLE II describes the governing body of the Town. The Board of Commissioners and the Mayor are the governing body. The mayor will serve a term of four years.

ARTICLE III provides for the election of the mayor and Commissioners.

ARTICLE IV sets out the organization and administration of the Town government:

- Mayor-council form of government.
- Town Attorney appointed by the Board of Commissioners.
- Town Clerk appointed by the Board of Commissioners.
- Tax Collector appointed by the Town. (This should read appointed by the Board of Commissioners.)

SECTION 2 sets out the purposes of the act: to revise the Charter and consolidate certain acts.

SECTION 3 provides that the act does not affect acts concerning the property, affairs, or government of public schools in the Town.

SECTION 4 lists the existing laws that have been repealed because they have either been consolidated into this act or have served their purpose.

SECTION 5 authorizes the Mayor and Commissioners serving on the date of the act to serve their full terms.

SECTION 6 provides that the act does not affect any rights or interests that arose under provisions repealed by the act.

SECTION 7 provides that all existing provisions of the Town that are not inconsistent with this act will continue until they are repealed or amended.

SECTION 8 provides that that any action by the Town or against the Town that is pending on the effective date of the act, is NOT affected by the act

SECTION 9 sets out a severability clause.

SECTION 10 provides that a reference to a statute in the act is deemed amended if it is later amended.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1530 A BILL TO BE ENTITLED AN ACT TO ALLOW THE TOWN OF TABOR CITY TO LEVY SPECIAL ASSESSMENTS FOR STREET OR SIDEWALK IMPROVEMENTS WITHOUT PETITION.

☒ 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

FOR JOURNAL USE ONLY

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1530*

Short Title:	Tabor City Assessments.	(Local)
Sponsors:	Representative Hill.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWN OF TABOR CITY TO LEVY SPECIAL ASSESSMENTS FOR STREET OR SIDEWALK IMPROVEMENTS WITHOUT PETITION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-217(a) and (c) do not apply to the Town of Tabor City. The remaining provisions of Article 10 of Chapter 160A of the General Statutes apply to the Town when making special assessments for street or sidewalk improvements.

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

HOUSE BILL 1530:
Tabor City Assessments

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Hill
Date:	June 9, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1530 is a local bill that authorizes the Town of Tabor City in Columbus County to levy special assessments for street or sidewalk improvements without first receiving a petition for the improvements signed by at least a majority in number of the owners of property to be assessed. SB 1167, introduced by Sen. Soles, is the companion bill.

CURRENT LAW: Under G.S. 160A-217(a), a city does not have power to levy special assessments for street or sidewalk improvements unless it receives a petition for the improvements signed by at least a majority in number of the owners of property to be assessed, who must represent at least a majority of all the lineal feet of frontage of the lands abutting on the street or portion to be improved. Unless the petition specifies another percentage, not more than 50% of the cost of the improvement may be assessed (not including the cost of improvements made at street intersections).

BILL ANALYSIS: House Bill 1530 authorizes the Town of Tabor City to levy special assessments for street or sidewalk improvements without meeting the above petition requirements. The remaining provisions in Article 10 (Special Assessments) of Chapter 160A (Cities and Towns) will continue to apply: the authorized uses for special assessments, the basis for making assessments, exemptions for corner lots and land owned by the U.S., assessments against State land if the State consents, assessments against railroad property, adoption of a preliminary resolution by the city council, notice of and hearing on the preliminary resolution, determination of costs, authorization of discounts, preliminary assessment roll, hearing on preliminary assessment roll, publication of notice of confirmation of assessment roll, appeal of assessment, payment and enforcement of assessments.

Exemptions from the petition requirements have been given to the following cities and towns:

- Town of Beech Mountain (S.L.1995-133).
- City of Laurinburg (S.L. 2000-13).
- City of Oxford (S.L.1993-240).
- Town of Carrboro (S.L. 1987-476), may levy assessments for certain unpaved streets without a petition.
- Town of Ahoskie (S.L. 1988-962).
- Town of Wake Forest (S.L. 1989-347), may levy special assessments for downtown parking improvements without regard for the petition requirements.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ALA-59 [v.2]

Date June 12 ,2002

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

Representative Luebke

moves to amend the bill on page 3, lines 42 and 43, by rewriting those lines to read:

"explain the basis for the agency's claim to the ~~debt and~~ debt, that the agency intends to apply the debtor's refund against the ~~debt.~~ debt, and that a collection assistance fee of fifteen dollars ($15.00) will be added to the debt if it is submitted for setoff. The notice must also inform the debtor that the".

SIGNED Luebke
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1523

Short Title:	Amend Property Tax Laws.	(Public)
Sponsors:	Representatives Hill; Allen, Buchanan, Holliman, Jarrell, Luebke, and Wainwright.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-357(b)(2) reads as rewritten:

"(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check, whichever is greater, subject to a ~~minimum of one dollar ($1.00) and a~~ maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

SECTION 2. G.S. 105-317.1 is amended by adding a new subsection to read:

"(c) A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument

regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed."

SECTION 3. G.S. 105-322(g)(5) reads as rewritten:

"(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.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c)."

SECTION 4. Section 4 of S.L. 2001-506 reads as rewritten:

"**SECTION 4.** Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, ~~2002.~~2004. Sections 2 and 3 of this act become effective January 1, 2002, and apply to manufactured home title cancellations and to declarations of intent, deeds, deeds of trust, and other instruments recorded after that date. The remainder of this act is effective when it becomes law."

SECTION 5.(a) G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

(1) Claimant agency. – Either of the following:

a. A State agency.

b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. – Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

d. Reserved for future codification purposes.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. A successor program of one of these programs.

(3) Debtor. – An individual who owes a debt.

(4) Department. – The Department of Revenue.

(5) Reserved.

(6) Local agency. – A county, to the extent it is not considered a State agency, or a municipality.

(7) Net proceeds collected. – Gross proceeds collected through setoff against a debtor's refund minus the collection assistance ~~fee retained by the Department.~~ fees provided in G.S. 105A-13.

(8) Refund. – An individual's North Carolina income tax refund.

(9) State agency. – Any of the following:

a. A unit of the executive, legislative, or judicial branch of State government.

b. A county, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act."

SECTION 5.(b) G.S. 105A-5 reads as rewritten:

"**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt and that the agency intends to apply the debtor's refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local

agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. That portion of the amount returned that reflects the collection assistance ~~fee~~ fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance ~~fee~~ fees ~~retained by the Department~~provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 5.(c) G.S. 105A-13 reads as rewritten:

"**§ 105A-13. Collection assistance fees.**

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars

($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. ~~If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt.~~ The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed.

(c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars ($15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. – If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt."

SECTION 6. Sections 1 and 4 of the act are effective when they become law. Sections 5(a), 5(b), and 5(c) become effective January 1, 2003. The remaining sections are effective for taxes imposed for taxable years beginning on or after July 1, 2002.

HOUSE BILL 1523:
Amend Property Tax Laws

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Hill
Date:	June 10, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: **House Bill 1523 is a recommendation of the Revenue Laws Study Committee and contains changes to the property tax laws that were proposed by the North Carolina Association of Assessing Officers and the Department of Revenue. These changes:**

- **Authorize tax collectors to impose a $25 returned check fee or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.**
- **Set out the procedure and time limit for appeals of personal property value, situs, or taxability.**
- **Clarify that the board of equalization and review may continue to meet after it adjourns to hear and decide appeals relating to personal property.**
- **Change the effective date of the definition of "real property" as amended in S.L. 2001-506 (HB 253).**
- **Amend the Setoff Debt Collection Act in Chapter 105A of the General Statutes to allow local agencies to impose a $15 local collection assistance fee on each local agency debt collected through setoff.**

ANALYSIS: Section 1 of the Bill amends G.S. 105-357(b) regarding the penalty imposed on a worthless check given to pay taxes. Current law authorizes the tax collector to impose 10% of the amount of the check, subject to a minimum of $1 and maximum of $1,000. The Bill authorizes the tax collector to impose $25 or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.

Section 2 of the Bill sets out the procedure and time limit for appeals of the value, situs, or taxability of personal property. The current statutory framework is oriented toward appeals of real estate tax values and does not specifically address appeals of personal property. Consequently, counties use different procedures and time limits for appeals of personal property. The Bill amends G.S. 105-317.1 to include the following:

- The appeal must be within 30 days after the date of the initial notice of value of the personal property. The tax bill will serve as notice of value if a separate written notice of value is not sent. The notice must set out the 30-day limit.
- Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer and allow the taxpayer to present evidence or argument.
- Within 30 days after the conference, the assessor must give written notice of the assessor's decision. Notice is not required if the taxpayer accepts the value, situs, or taxability of the property.

- Within 30 days of notice of the assessor's final decision, the taxpayer may request review by the board of equalization and review or the board of county commissioners.

Section 3 of the Bill authorizes a county board of equalization and review to meet after its adjournment to hear appeals relating to personal property. Last session, the Revenue Laws Study Committee recommended that a county board of equalization and review be given the authority to 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. Cabarrus, Lincoln, and Stokes Counties already had this authority under local acts. The recommendation was enacted in S.L. 2001-139.

Section 4 of the Bill changes an effective date in S.L. 2001-506. Last session, the General Assembly made several changes to the laws regarding the classification of a manufactured home as real property. One of these changes was to amend the definition of "real property" in G.S. 105-273(13) of the property tax laws, by removing the requirement that a manufactured home have multiple sections in order to be considered real property. The amendment also clarified that a manufactured home would be considered personal property if it did not meet the following statutory conditions: has the moving hitch, wheels, and axles removed, and is placed upon a permanent foundation on land owned by the owner of the manufactured home. This definition change became effective for taxable years beginning on or after July 1, 2002. The Bill moves the effective date to taxable years beginning on or after July 1, 2004. The tax assessors have not been able to determine whether the manufactured homes in their county meet this definition and have requested an extension of the effective date.

Section 5 of the Bill amends the Setoff Debt Collection Act in Chapter 105A of the General Statutes to authorize the charge of a $15 collection assistance fee on each local agency debt collected through setoff. The Act currently authorizes the Department of Revenue to impose a collection assistance fee of no more than $15 on overdue tax debts collected through setoff against the debtor's refund. The Act also provides for optional usage of the Act by a local agency (county) that is owed a debt. The local agency must submit the debt through one of the following:

1. A clearinghouse that is established pursuant to an interlocal agreement and that has agreed to submit debts on behalf of any requesting local agency.
2. The North Carolina League of Municipalities.
3. The North Carolina Association of County Commissioners.

The Bill amends the Setoff Debt Collection Act to require the Department of Revenue to collect a $15 collection assistance fee on each local agency debt collected through setoff. The fee must be remitted by the Department to the clearinghouse that submitted the debt. Last year the N.C. Association of County Commissioners and the League of Municipalities entered into an interlocal agreement to establish a clearinghouse for local debt collection. The clearinghouse is registered with the Department of Revenue as the North Carolina Local Government Debt Setoff Clearinghouse. The Association and League have also contracted with a third party to process and compile the local debts. The $15 collection assistance fee will be used to pay for the costs of collecting these debts.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1523 (1st Edition)

SHORT TITLE: Amend Property Tax Laws

SPONSOR(S): Rep. Hill

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	No General Fund Impact				
Local Governments	Potential Revenue Increase – See Assumptions and Methodology				
Setoff Debt Collection Clearinghouse	Potential Revenue Increase – See Assumptions and Methodology				
EXPENDITURES					
Local Governments	Potential Cost Savings – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, North Carolina Department of Revenue, Property Tax Division.

EFFECTIVE DATE: Sections 1 (worthless checks) and 4 (manufactured homes) are effective when they become law. The remainder becomes effective for taxes imposed on taxable years beginning on or after July 1, 2002.

BILL SUMMARY: This proposal makes several changes to the property tax law and is recommended by the Revenue Laws Study Committee, the North Carolina Association of Assessing Officers and the North Carolina Department of Revenue.

Section 1 addresses the returned check fee charged by tax collectors. Under current statute the collector can impose a 10% fee for returned checks, with a minimum of $1.00 and a maximum of $1,000. The proposal increases the minimum fee to $25.00. The 10% rate and the $1,000 maximum provisions are retained. Section 2 defines the procedures and time limits surrounding a property tax appeal of personal property taxes. Section 3 authorizes local boards of equalization and review to meet after their adjournment date to hear personal property appeals. Section 4 changes the effective date of several property tax changes made last session in regards to manufactured homes. Section 5 authorizes the Department of Revenue to collect a $15 collection assistance fee on each local debt collected through the Setoff Debt Collection program. The funds are to be forwarded to the North Carolina Local Government Debt Setoff Clearinghouse.

ASSUMPTIONS AND METHODOLOGY:

Section 1: Because the proposal increases the minimum amount charged by tax collectors for returned checks, local fee revenues will increase. Fiscal Research is unable to offer an exact estimate of the increase, although it is expected to be relatively small.

Section 2: The statutory procedure for property tax appeals is oriented towards real estate and does not specifically address how to handle motor vehicle appeals. As a result, counties use a variety of procedures and timelines. Because the bill only clarifies procedure, it is not expected to have a fiscal impact.

Section 3: This section is not expected to have a fiscal impact as it merely extends the time limit for appeals.

Section 4: During the 2001 session several changes were made regarding the classification of manufactured homes for property tax purposes. In particular, the statute laid out specific qualifications for a manufactured home to be considered real property. This included having multiple sections, being placed on a permanent foundation, and having several items (hitch, wheels, axles) removed from the home. The effective date for the changes was July 1, 2002. Since the legislation passed, many assessors have been unable to determine if all the manufactured homes in the county meet the new criteria. As a result, they are asking that the current effective date be delayed until July 1, 2004. Because some properties would continue to be valued as personal property for two extra years, some impact is expected on property taxes. However, Fiscal Research is unable to make a reliable estimate of the impact during that period.

Section 5: Under current law, counties and cities can submit debts for collection to the Department of Revenue as long as the request is forwarded through the League of Municipalities, the County Commissioners Association, or a clearinghouse established through interlocal agreement. However, when the government submits the debt for collection, they must absorb the $15 fee themselves. The proposal authorizes the Department of Revenue to collect the $15 fee from the delinquent payer. This fee does not apply to child support. The proposal will reduce the cost of debt collection for local governments, and will likely increase program usage. However, no firm estimate is available on the total financial impact for local governments.

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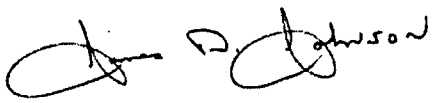

DATE: June 6, 2002

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1521

Short Title:	Conform Mobile Telecommunications Sourcing.	(Public)
Sponsors:	Representatives Allen, Luebke (Primary Sponsors); Buchanan, Hill, Holliman, Jarrell, McComas, Wainwright, Alexander, Cox, Edwards, Gibson, Hurley, and Womble.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO CONFORM SOURCING OF MOBILE TELECOMMUNICATIONS SERVICES TO THE FEDERAL MOBILE TELECOMMUNICATIONS SOURCING ACT AND TO CODIFY THE SOURCING PRINCIPLES FOR OTHER TELECOMMUNICATIONS SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3 is amended by adding a new subdivision to read:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(26a) Place of primary use. – The street address representative of where the use of a customer's telecommunications service primarily occurs. The street address must be the customer's residential street address or primary business street address. For mobile telecommunications service, the street address must be within the licensed service area of the service provider. If the customer who contracted with the telecommunications provider for the telecommunications service is not the end user of the service, the end user is considered the customer for the purpose of determining the place of primary use."

SECTION 2. G.S. 105-164.3(27) reads as rewritten:

"(27) Prepaid telephone calling ~~arrangement.~~ Service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

d. Is sold in units or dollars whose number or dollar value declines with use and is known on a continuous basis."

SECTION 3. G.S. 105-164.3(39) is repealed.

SECTION 4. G.S. 105-164.4(a)(4d) reads as rewritten:

"(4d) The sale or recharge of prepaid telephone calling ~~arrangements~~ service is taxable at the general rate of tax. The tax applies regardless of whether tangible personal property, such as a card or a telephone, is transferred. Prepaid telephone calling ~~arrangements~~ service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision ~~are~~ is not subject to tax as a telecommunications service.

~~Prepaid telephone calling arrangements are taxable at the point of sale instead of at the point of use. If the sale or recharge of a prepaid telephone calling arrangement does not take place at a retailer's place of business, the sale or recharge is considered to have taken place at one of the following:~~

~~a. The customer's shipping address, if an item of tangible personal property is shipped to the customer as part of the transaction.~~

~~b. The customer's billing address or, for mobile telecommunications service, the customer's service address, if no tangible personal property is shipped to the customer as part of the transaction.~~"

SECTION 5. G.S. 105-164.4B(a)(3) reads as rewritten:

"(a) Principles. – The following principles apply in determining where to source the sale of a product. These principles apply regardless of the nature of the product.

...

(3) Delivery address unknown. – When a seller of a product does not know the address where a product is received, the sale is sourced to the first address or location listed in this ~~subsection~~ subdivision that is known to the seller:

a. The business or home address of the purchaser.

b. The billing address of the ~~purchaser.~~purchaser or, if the product is a prepaid telephone calling service that authorizes the purchase of mobile telecommunications service, the location associated with the mobile telephone number.

c. The address of the seller."

SECTION 6. G.S. 105-164.4C(a) reads as rewritten:

"(a) General. – The gross receipts derived from providing telecommunications service in this State are taxed at the rate set in G.S. 105-164.4(a)(4c). ~~Mobile~~

~~telecommunications service is provided in this State if the customer's service address is in this State and the call originates or terminates in this State.~~Telecommunications service is provided in this State if the service is sourced to this State under the sourcing principles set out in subsections (a1) and (a2) of this section. The definitions and provisions of the federal Mobile Telecommunications Sourcing Act apply to the sourcing and taxation of mobile telecommunications services."

SECTION 7. G.S. 105-164.4C(b)(1) reads as rewritten:

"(b) Included in Gross Receipts. – Gross receipts derived from telecommunications service include the following:

(1) Receipts from ~~local, intrastate, interstate, toll, private, and mobile telecommunications service.~~flat rate service, service provided on a call-by-call basis, mobile telecommunications service, and private telecommunications service.

..."

SECTION 8. G.S. 105-164.4C(c)(2) reads as rewritten:

"(c) Excluded From Gross Receipts. – Gross receipts derived from telecommunications service do not include any of the following:

...

(2) Telecommunications services that are resold as part of a prepaid telephone calling ~~arrangement.~~service.

..."

SECTION 9. G.S. 105-164.4C is amended by adding two new subsections to read:

"(a1) General Sourcing Principles. – The following general sourcing principles apply to telecommunications services. If a service falls within one of the exceptions set out in subsection (a2) of this section, the service is sourced in accordance with the exception instead of the general principle.

(1) Flat rate. – A telecommunications service that is not sold on a call-by-call basis is sourced to this State if the place of primary use is in this State.

(2) General call-by-call. – A telecommunications service that is sold on a call-by-call basis and is not a postpaid calling service is sourced to this State in the following circumstances:

a. The call both originates and terminates in this State.

b. The call either originates or terminates in this State and the telecommunications equipment from which the call originates or terminates and to which the call is charged is located in this State. This applies regardless of where the call is billed or paid.

(3) Postpaid. – A postpaid calling service is sourced in accordance with either of the following principles, at the election of the seller:

a. The principle set out in subdivision (a1)(2) of this section for call-by-call service.

b. The origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if

the system used to transport the signal is not the seller's system, by information the seller receives from its service provider.

(a2) Sourcing Exceptions. – The following telecommunications services and products are sourced in accordance with the principles set out in this subsection:

(1) Mobile. – Mobile telecommunications service is sourced to the place of primary use, unless the service is authorized by a prepaid telephone calling service or is air-to-ground radiotelephone service. Air-to-ground radiotelephone service is a postpaid calling service that is offered by an aircraft common carrier to passengers on its aircraft and enables a telephone call to be made from the aircraft. The sourcing principle in this subdivision applies to a service provided as an adjunct to mobile telecommunications service if the charge for the service is included within the term 'charges for mobile telecommunications services' under the federal Mobile Telecommunications Sourcing Act.

(2) Prepaid. – Prepaid telephone calling service is sourced in accordance with G.S. 105-164.4B.

(3) Private. – Private telecommunications service is sourced in accordance with subsection (e) of this section."

SECTION 10. G.S. 105-164.4C(e) reads as rewritten:

"(e) ~~Interstate~~ Private Line. – The gross receipts derived from ~~interstate~~ private telecommunications service are ~~taxable~~ sourced as follows:

(1) ~~One hundred percent (100%) of the charge imposed at each channel termination point in this State.~~If all the customer's channel termination points are located in this State, the service is sourced to this State.

(2) ~~One hundred percent (100%) of the charge imposed for the total channel mileage between each channel termination point in this State.~~If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel termination points, the charge for each channel termination point located in this State is sourced to this State.

(3) ~~Fifty percent (50%) of the charge imposed for the total channel mileage between the first channel termination point in this State and the nearest channel termination point outside this State.~~ If all the customer's channel termination points are not located in this State and the service is billed on the basis of channel mileage, the following applies:

a. A charge for a channel segment between two channel termination points located in this State is sourced to this State.

b. Fifty percent (50%) of a charge for a channel segment between a channel termination point located in this State and a channel termination point located in another state is sourced to this State.

(4) If all the customer's channel termination points are not located in this State and the service is not billed on the basis of channel termination

points or channel mileage, a percentage of the charge for the service is sourced to this State. The percentage is determined by dividing the number of channel termination points in this State by the total number of channel termination points."

SECTION 11. G.S. 105-164.4C(h) reads as rewritten:

"(h) Definitions. – The following definitions apply in this section:

~~(1) Call center. – Defined in G.S. 105-164.27A.~~

~~(2) Interstate telecommunications service. – Telecommunications service that originates or terminates in this State, but does not both originate and terminate in this State, and is charged to a service address in this State.~~

~~(3) Intrastate telecommunications service. – Telecommunications service that both originates and terminates in this State.~~

~~(4) Local telecommunications service. – Telecommunications service that provides access to a local telephone network and enables a user to communicate with substantially everyone who has a telephone or radiotelephone station that is part of the local telephone network.~~

~~(5) Mobile telecommunications service. – Defined in G.S. 105-164.3.~~

~~(6) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.~~

~~(7) Service address. – Defined in G.S. 105-164.3.~~

~~(8) Telecommunications service. – Defined in G.S. 105-164.3.~~

~~(9) Toll telecommunications service. – Any of the following:~~

~~a. A service for which there is a toll charge that varies in amount with the distance or elapsed transmission time of each individual communication.~~

~~b. A service that entitles the subscriber, upon payment of a periodic charge, determined as a flat amount or on the basis of total elapsed transmission time, to an unlimited number of communications to or from all or a substantial portion of those who have a telephone or radiotelephone station in an area outside the local telephone network.~~

(1) Call-by-call basis. – A method of charging for a telecommunications service whereby the price of the service is measured by individual calls.

(2) Call center. – Defined in G.S. 105-164.27A.

(3) Mobile telecommunications service. – Defined in G.S. 105-164.3.

(4) Place of primary use. – Defined in G.S. 105-164.3.

(5) Postpaid calling service. – A telecommunications service that is charged on a call-by-call basis and is obtained by making payment at the time of the call either through the use of a credit or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by charging the call to a telephone number that is not associated

with the origination or termination of the telecommunications service. A postpaid calling service includes a service that meets all the requirements of a prepaid telephone calling service, except the exclusive use requirement.

(6) Prepaid telephone calling service. – Defined in G.S. 105-164.3.

(7) Private telecommunications service. – Telecommunications service that entitles a subscriber of the service to exclusive or priority use of a communications channel or group of channels.

(8) Telecommunications service. – Defined in G.S. 105-164.3."

SECTION 12. G.S. 105-467(b)(6) reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

SECTION 13. Subdivision (6) of the first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws reads as rewritten:

"(6) The sales price of prepaid telephone calling ~~arrangements~~ service taxed as tangible personal property under G.S. 105-164.4(a)(4d)."

SECTION 14. G.S. 105-164.4C(a1)(3), as enacted by this act, reads as rewritten:

"(3) ~~Post-paid.~~Postpaid. – A ~~post-paid~~postpaid calling service is sourced ~~in accordance with either of the following principles, at the election of the seller:~~

~~a. The principle set out in subdivision (a1)(2) of this section for call-by-call service.~~

~~b. The~~

to the origination point of the telecommunications signal as first identified by either the seller's telecommunications system or, if the system used to transport the signal is not the seller's system, by information the seller receives from its service provider."

SECTION 15. G.S. 62A-21(4) reads as rewritten:

"(4) "CMRS connection" means each mobile handset telephone number assigned to a CMRS customer with a ~~billing address~~ place of primary use in North Carolina."

SECTION 16. G.S. 105-164.4C(e)(4), as enacted by Section 10 of this act, and Section 14 of this act become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after January 1, 2004. The remainder of this act becomes effective August 1, 2002, and applies to taxable services reflected on bills dated after August 1, 2002.

HB 1521:
Conform Mobile Telecommunications Sourcing

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Allen
Date:	June 12, 2002	**Summary by:**	Cindy Avrette
Version:	1st edition		Committee Counsel

SUMMARY: ***This bill was recommended by the Revenue Laws Study Committee and conforms North Carolina's sourcing of mobile telecommunications services to the federal Mobile Telecommunications Sourcing Act. It also codifies the sourcing rules for other telecommunications services. Two of the sourcing principles become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after that date. The remainder of the bill would becomes effective August 1, 2002, and apply to taxable services reflected on bills dated after August 1, 2002.***

CURRENT LAW: Last session, the General Assembly simplified the taxation of telecommunications services by providing one tax at one rate for all telecommunication services, including interstate telecommunications service. Under the law, mobile telecommunications is considered to be taxable in this State if the customer's service address is in this State and the call originates or terminates in this State. However, under the federal Mobile Telecommunications Act, mobile telecommunications service is taxable by the state of the customer's place of primary use, regardless of whether or not the call originates or terminates in the state. A mobile customer's service address and place of primary use are the same: the residential street address or the primary business street address of the customer that is within the licensed service area of the service provider. Therefore, it is the requirement that the call originate or terminate in the State that must be changed to conform to the federal mobile telecommunications sourcing rules.

BACKGROUND: "Sourcing" is the determination of the jurisdiction within which a transaction is considered to take place for tax purposes. Jurisdictions that tax interstate and international telecommunications generally follow the "*Goldberg* Rule", which is based on an Illinois tax that was upheld by the U.S. Supreme court in *Goldberg v. Sweet*, 488 US 252 (1989). Under the *Goldberg* Rule a telephone call is subject to a jurisdiction's tax if the call meets one of the following two criteria:

- It both originates and terminates in that jurisdiction.
- It originates *or* terminates in that jurisdiction *and* is charged to a service address in that jurisdiction.

Because of the complexity of identifying the source of mobile telecommunications, federal legislation was passed that takes effect of August 1, 2002, that sources mobile telecommunications transactions at the place of primary use, which is the same as the service address – the residential address or business premises of the purchaser.

Under the federal legislation, states could furnish service providers with a database[1] matching street addresses with taxing jurisdictions.[2] Service providers would be held harmless for any errors resulting

[1] The Multi-State Tax Commission and the Federation of Tax Administrators are currently involved in a project to specify the format of the database.

from their use of the database. If a database is not provided for a state, then the service provider may determine the appropriate taxing jurisdiction by using an enhanced zip code[3] to assign each street address to a specific taxing jurisdiction in that state. Service providers would be held harmless from any tax liability that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction under this method. The accuracy of the method used is important to protect the tax base of local taxing jurisdictions. The hold harmless provision is important to service providers who provide service in a state with multiple taxing jurisdictions.

The Streamlined Sales Tax Project is working with the Telecommunications Industry on uniform provisions for sourcing as well as refund limitation provisions based upon the hold harmless provisions in the federal Mobile Telecommunications Sourcing Act. The Streamlined Sales Tax Project and the implementing states[4] have adopted principles for sourcing. The principles do not differ from North Carolina's current sourcing principles. This bill codifies those principles. The Streamlined Sales Tax Project has not yet completed its work on the refund limitation provisions. Since North Carolina does not have multiple taxing jurisdictions[5], the need for these provisions is not imminent. Therefore, this bill does not include any provisions on this issue.

BILL ANALYSIS: This bill conforms North Carolina's sourcing of mobile telecommunications to the federal Mobile Telecommunications Sourcing Act and codifies the sourcing principles adopted by the Streamlined Sales Tax Project and the 27 implementing states. Following is a section-by-section analysis of the bill:

Sections 1, 3, and 15:	Replace the term "service address" and "billing address" with the term "place of primary use" because that is the terminology used in the federal Mobile Telecommunications Sourcing Act.
Sections 2, 8, 12, and 13:	Change the term "prepaid telephone calling arrangement" to the term "prepaid telephone calling service" so that the terminology is consistent with the other forms of telecommunication services.
Sections 4 and 5:	Prepaid telephone calling services are taxed as tangible personal property, not as a telecommunications service. Section 4 removes the sourcing language from the statute that sets the sales tax rates and Section 5 modifies the sourcing principles that apply to tangible personal property to accommodate the taxation of prepaid telephone calling services.
Section 6:	Deletes the sentence that sources mobile telecommunications based on the call originating or terminating in this State because it conflicts with the sourcing principle in the federal Mobile Telecommunications Sourcing Act. It also specifies that mobile telecommunications

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[2] Some states allow local governments to impose a tax on telecommunications services, resulting in multiple taxing jurisdictions within a state.

[3] The level of accuracy for the nine-digit zip code ranges from 85% to 99%. A more accurate system may be developed using a geographic mapping system. The federal law gives states the ability to develop a more accurate system if it so chooses.

[4] There are 27 states that have enacted legislation based on either the Uniform Sales and Use Tax Administration Act or the Simplified Sales and Use Tax Administration Act: AR, FL, IL, IN, KY, LA, ME, MD, MI, MN, NE, NV, NJ, NC, ND, OH, OK, RI, SD, TN, TX, UT, WA, WI, WV, WY, and the District of Columbia.

[5] North Carolina distributes a portion of the State-imposed telecommunications tax to the cities.

services be taxed in accordance with federal law. This reference alerts the reader that there is applicable federal law on this issue.

Sections 7 and 11: Under the federal Mobile Telecommunications Sourcing Act and the Streamlined Sales Tax Project, telecommunications service is sourced based on the type of service provided rather than the type of call. The bill defines the different types of services and repeals the terms associated with the types of calls.

Sections 9 and 10: Set forth the mobile telecommunications sourcing principle in the federal Mobile Telecommunications Sourcing Act and they codify the principles currently used by the State to source other telecommunications services. Section 10 rewrites the sourcing principles for private telecommunications service in a more understandable format and it adds a sourcing principle that is not currently applicable to private lines in the State, but may be applicable in the future. The principles codified in the bill are the same principles adopted by the Streamlined Sales Tax Project and the implementing states in March of 2002. Under the bill, at the request of the telecommunications industry, the new sourcing principle applicable to private telecommunications service does not become effective until January 1, 2004.

Sections 9 and 14: Under the Streamlined Sales Tax Project, postpaid calling service will be sourced based on the origination point of the telecommunications signal as first identified by the seller's telecommunications system. However, not every company in the telecommunications industry has the capability to determine the origination point of the signal. The bill gives the seller two options to source postpaid calling service until the year 2004; at which point the seller must source based on the origination point of the telecommunications signal.

Section 16: At the request of the telecommunications industry, two of the sourcing principles in the bill would become effective January 1, 2004, and apply to taxable services reflected on bills dated on or after that date. The remainder of the bill would become effective August 1, 2002, and apply to taxable services reflected on bills dated after that date; the August 1, 2002, effective date corresponds with the effective date of the federal Telecommunications Sourcing Act.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1520*

Short Title:	Extend Qualified Business Venture Tax Credit.	(Public)
Sponsors:	Representatives Allen, Luebke (Primary Sponsors); Buchanan, Hill, Holliman, Jarrell, McComas, Wainwright, Alexander, Cox, Dedmon, Edwards, Hurley, Morris, and Weiss.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of

the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Article is repealed effective for investments made on or after January 1, 2004."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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HOUSE BILL 1520
PROPOSED COMMITTEE SUBSTITUTE H1520-PCS7345-SC-27

Short Title: Extend Qualified Business Venture Tax Credit. (Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

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Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, 2004."

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

HB 1520
Extend Qualified Business Venture Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Allen
Date:	June 12, 2002	**Analysis by:**	Y. Canaan Huie
Version:	PCS for 1st edition		Staff Attorney

SUMMARY: ***This bill extends the sunset for the tax credit for qualified business investments for one year. Without this bill, that tax credit would expire for investments made on or after January 1, 2003. This bill is effective when it becomes law. The PCS makes a technical change.***

ANALYSIS: The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individuals taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. In 1998, as part of the appropriations bill, the credit was extended for four additional years until January 1, 2003. This bill would extend that sunset for one additional year.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. In general, a taxpayer forfeits the credit if the taxpayer transfers the securities within one year or the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made.[1]

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because they reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in either a North Carolina business or an investment company whose purpose is to invest in North Carolina businesses, while no tax reduction was allowed for purchasing similar stock

[1] There are two exceptions to this forfeiture provision. First, if the transfer occurs as a result of the death of the taxpayer, the liquidation of the taxpayer, or certain reorganizations of the qualified business, within the one-year period, the transfer does not require forfeiture. Second, the 1998 legislation created an exception to this forfeiture provision for projects in the film industry. It is unusual for a project in that industry in which a person might invest to last for more than 5 years.

in out-of-state businesses or investment companies whose purpose is to invest in businesses that may not be North Carolina businesses. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit along with several others, at great length. The original proposal of the Committee was to repeal all qualified business investment credits, effective January 1, 1997. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include investments in businesses located both inside and outside North Carolina, but was no longer allowed for investments in investment companies and was limited to investments made by individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50-mile radius of their home.

There may be a constitutional concern with the provision of the credit regarding "qualified grantee businesses". In order to be a business in which investments are eligible for a credit, the business must be either a "qualified business venture" or a "qualified grantee business". Both types of businesses must be registered with the Secretary of State. The definition of "qualified business venture" includes several general requirements related to the line of business, gross revenues of the business, and the organization date of the business. The definition of "qualified grantee business" includes a requirement that the business have received a grant in at least one of the three previous years from one of several named entities. One could argue that this provision violates the rule of uniformity since a credit is allowed only for investments in business that have received a grant from one of several specifically named organizations, and not for investments in similar businesses that have received grants from similar organizations. However, to date this issue has not been raised in litigation and is therefore not settled.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: June 7, 2002

TO: House Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: HB 1520 PCS - Extend Qualified Business Venture Tax Credit

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FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund		($6,000,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State

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

BILL SUMMARY: The bill extends the individual income tax credit for Qualified Business investments from January 1, 2003 to January 1, 2004.

ASSUMPTIONS AND METHODOLOGY: The amount of Qualified Business credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in

2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on tax returns filed in the spring of 2004.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1509

Short Title:	Revenue Administrative Changes.	(Public)
Sponsors:	Representatives Holliman, Luebke, Wainwright; Allen, Buchanan, Hill, and Jarrell.	
Referred to:	Finance.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes:~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.
b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
c. Defoliants for use on cotton or other crops.
d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

SECTION 2. G.S. 105-164.16(b) reads as rewritten:

"(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the ~~15th~~last day of the month following the end of the quarter."

SECTION 3. G.S. 105-164.16(b2) reads as rewritten:

"(b2) Semimonthly. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last

day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.

A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the ~~amount due for each semimonthly payment period~~ lesser of the following and includes the underpayment with the monthly return for those semimonthly payment ~~periods.~~periods:

(1) The amount due for each semimonthly payment period.

(2) The average semimonthly payment for the prior calendar year."

SECTION 4. Part 5 of Article 5 of Chapter 105 is amended by adding a new section to read:

"**§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale."

SECTION 5. Section 2 of this act becomes effective October 1, 2002, and applies to taxes levied on or after that date. Section 3 of this act becomes effective July 1, 2002, and applies to payments due on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1509:
Revenue Administrative Changes

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Reps. Holliman, Luebke, and Wainwright
Date:	June 12, 2002	**Summary by:**	Trina Griffin Committee Counsel
Version:	1st Edition		

SUMMARY: House Bill 1509 is a recommendation of the Revenue Laws Study Committee and makes the following changes and clarifications in the tax laws:

- *It clarifies that the sales and use tax exemption for certain agricultural substances does not include any equipment or devices used to apply those substances.*
- *It changes the due date of quarterly sales tax returns from the 15th of a month to the last day of a month to enable the Department to spread the processing work more evenly throughout the month.*
- *It changes the underpayment penalty calculation for semimonthly sales tax payers to conform to the requirements of the Streamlined Sales Tax Project.*
- *It clarifies the use of sales and use tax exemption certificates.*

CURRENT LAW & ANALYSIS:

I. Clarifying the Exemption for Certain Agricultural Substances

CURRENT LAW: Included among the agricultural group of sales and use tax exemptions is an exemption for plant growth inhibitors, regulators, or stimulators when purchased for use on plants held or produced for commercial purposes. This exemption was at issue in a recent North Carolina Court of Appeals case, *American Ripener Company, Inc. v. Secretary of Revenue*.[1] In this case, the plaintiff manufactured and sold ethylene concentrate, a plant growth regulator or stimulator that controls the speed of the ripening of fruits and vegetables. The plaintiff also manufactured, sold, and leased generators used to control the release of the ethylene gas. The plaintiff challenged the assessment of sales tax on its sales of ethylene and the assessment of use tax for its generators and replacement parts for its generators. The Department argued that the exemption was not intended to include any hardware or machinery, such as generators, used to apply the exempted substances. Nevertheless, the Court held that since the generators were used to control the release of ethylene gas and to regulate the speed of the ripening of fruits and vegetables, they were plant growth regulators and stimulators and, therefore, exempt from the sales and use tax. The Department's petition for review by the North Carolina Supreme Court was denied. The Department has recommended amending this exemption to clarify that it does not apply to any equipment or devices used to dispense the substances listed in the exemption.

[1] 147 N.C.App. 142 (2001), *cert. denied*, 355 N.C. 210 (2002).

BILL ANALYSIS: G.S. 105-164.13(2a) exempts the following from sales and use tax when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:

- Remedies, vaccines, medications, litter materials, and feeds for animals.
- Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- Defoliants for use on cotton or other crops.
- Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

Section 1 of the bill clarifies that only these substances, and not any equipment or devices used to administer, release, apply, or otherwise dispense these substances, are exempt from the sales and use tax.

II. Due Date for Quarterly Sales Tax Returns

CURRENT LAW: Quarterly sales tax returns are due on the 15th of a month. In 2001, the General Assembly lowered the threshold for monthly payments of withheld taxes from $500 to $250. Monthly withholding returns are due on the 15th of the month, the same day as monthly and quarterly sales and use tax returns. As a result of the monthly threshold change, approximately 25,000 employers moved from a quarterly to a monthly filing status. The Department now receives 25,000 more returns in eight of the twelve months of the year than it was receiving prior to the change. Therefore, the Department has recommended changing the due date of quarterly sales tax returns from the 15th of a month to the end of the month to enable the Department to spread the work more evenly throughout the month. Currently, there are 91,000 quarterly sales tax filers.

BILL ANALYSIS: Section 2 of the bill changes the due date for quarterly sales tax returns from the 15th of a month to the end of a month. This change would make the due date for quarterly sales tax returns consistent with the due date for quarterly withholding tax returns. This change would not impact the timing of local sales and use tax distributions, nor would it shift any funds from one fiscal year to the next.

III. Underpayment Penalty Calculation for Semimonthly Sales Tax Payers

CURRENT LAW: A taxpayer who is consistently liable for at least $10,000.00 a month in State and local sales and use taxes must pay the tax twice a month and file a return on a monthly basis. A payment is required for each semimonthly period. The first semimonthly payment covers the period from the first day of the month through the 15th day of the month, and the second semimonthly payment covers the period from the 16th day of the month through the last day of the month. The monthly return covers both semimonthly payment periods with any additional amount due and is due to be filed by the 20th day of the following month. A taxpayer is not subject to interest or penalties for an underpayment for a semimonthly payment

period if the taxpayer timely pays at least 95% of the amount due for that payment period and includes the underpayment with the monthly return for both payment periods.

In 2000, the General Assembly enacted legislation to enable North Carolina to participate in the Streamlined Sales Tax Project, which is designed to simplify and modernize sales and use tax administration. There are certain requirements that each state must adopt in order to participate in the project. One requirement with regard to the remittance of funds is that if the State requires more than one remittance per return, the amount of the additional remittance must be determined through a calculation method rather than actual collections. Since semimonthly sales tax payers are required to send two remittances per month with one monthly return, the Department has recommended amending the underpayment penalty calculation for semimonthly sales tax payers which would provide an additional method of calculating their estimated tax liability and thus conform to the requirements of the Streamlined Sales Tax Project.

BILL ANALYSIS: Section 3 of the bill amends the method for calculating the underpayment penalty for semimonthly sales tax payers. Neither interest nor penalties would apply to the underpayment of sales tax remitted on a semimonthly basis if the taxpayer timely pays at least 95% of the lesser of the following:

- The amount due for the semimonthly payment period; or
- The average semimonthly payment for the prior calendar year.

Just as under the current law, the taxpayer must also include the underpayment with the monthly return for those semimonthly payment periods.

IV. Use of Exemption Certificates

CURRENT LAW: The Department of Revenue administers many of the sales and use tax exemptions and preferential rates targeted at certain industries, such as farming and manufacturing, through the use of an exemption certificate. The statutes do not address exemption certificates, however, except in the penalty provisions in G.S. 105-236(5a), which authorizes the Secretary to assess a penalty for the misuse of an exemption certificate. The Department has recommended that the practice of using exemption certificates be incorporated into the statutes to avoid any questions about the ability of taxpayers to claim exemptions through this method.

BILL ANALYSIS: Section 4 of the bill would codify a longstanding practice of the Department which requires that a purchaser of tangible personal property that is exempt from tax or subject to a preferential rate of tax obtain an exemption certificate from the Department in order to receive the exemption or preferential rate.

EFFECTIVE DATES: The section changing the due date for quarterly sales tax returns (Section 2) would become effective on October 1, 2002, and would apply to taxes levied on or after that date. The section changing the underpayment penalty calculation for semimonthly sales tax payers (Section 3) would become effective July 1, 2002, and would apply to payments due on or after that date. The remainder of the act would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1509 (1st Edition)

SHORT TITLE: Revenue Administrative Changes

SPONSOR(S): Rep. Holliman

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	Potential Revenue Change – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Section 2 and 3 (quarterly sales tax returns) become effective October 1, 2002 and applies to taxes levied on or after that date. The remainder of the act becomes effective when law.

BILL SUMMARY: This proposal includes several changes recommended by the North Carolina Department of Revenue. Section 1 clarifies that equipment used to dispense plant growth inhibitors is not exempt from sales tax. Section 2 changes the due date for quarterly sales tax returns from the 15th of the month to the last day of the month, following the end of the quarter. Section 3 changes the underpayment penalty calculation for semimonthly taxpayers to conform to the Streamlined Sales Tax Project. Section 4 clarifies the use of sales and use tax exemption certificates. It is recommended by the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY:

Section 1: This proposal is a result of a North Carolina Court of Appeals decision. In American Ripener Co. Inc. v. Muriel K. Offerman, Secretary of Revenue, the court considered the application of state sales taxes to a plant growth regulator or stimulator which controls the ripening of fruits and vegetables (ethylene), as well as the equipment used to deliver that chemical. Tax on replacement parts was also an issue. The court held that all of these items are exempt from sales and use tax under G.S. 105-164.13(2) and G.S. 105-164.13 (2a) which exempts "plant growth inhibitors, regulators, or stimulators for agriculture including systematic and contact or other sucker control agents for tobacco and other crops". The court also ruled that the generators and associate parts are also inhibitors and are therefore exempt from sales tax. The proposal effectively amends G.S. 105-164.13(2a) to make the equipment and parts associated with this gas treatment subject to sales and use taxes. (The Department had previously assumed all these items were taxable). In making its ruling, the court effectively reduced sales tax revenue. The bill would restore at least some of that

revenue to the General Fund. As such, the bill in and of itself would create a small revenue gain. However, Fiscal Research is unable to create an exact estimate of the value of ethylene delivery parts and equipment. As a result, no estimate is possible on this portion of the proposal.

Section 2: Currently the Department of Revenue receives monthly withholding returns, monthly sales tax returns, and quarterly sales tax returns on the 15th of the month. On the 15th of March, April, September, and October income tax returns are due as well. Shifting the due date of quarterly sales and use tax returns from the 15th of the month to the end of the month will create a more even distribution of work in the Department. Because the payments are due in the month following the end of the quarter (October, February, April, and July) the shift will not move any revenue from one fiscal year to the next. Some loss of interest on the payments or "float" will occur. However, because of the relatively small sums of money involved, the Department expects the loss to be minimal.

Section 3: This section changes the calculation of penalty for underpayment by semimonthly sales tax payers. Under current law the taxpayer must remit at least 95% of the amount due for each semimonthly payment period. This proposal allows the taxpayer to remit the lesser of this amount or the average semimonthly payment for the prior calendar year. Clearly this proposal will result in some loss of penalty revenue. However, no data is available to determine the magnitude of the loss. The Department expects the loss to be slight.

Section 4: Historically the Department of Revenue has issued exemption certificates to taxpayers in certain exempted industries to facilitate tax administration. However, there is no reference to exemption certificates in the statutes, except as it relates to penalties for misuse of such a certificate. This proposal would codify the practice of issuing exemption certificates. Since the proposal is only codifying the existing practice of the Department, no fiscal impact is expected.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: James D. Johnson

DATE: June 6, 2002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1510*

Short Title:	Icard Fire Tax Rate.	(Local)
Sponsors:	Representatives Buchanan; and Thompson.	
Referred to:	Finance.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ICARD FIRE DISTRICT TO LEVY AN AD VALOREM TAX AT THE GENERAL LAW RATE.

The General Assembly of North Carolina enacts:

SECTION 1. The Board of Commissioners of Burke County may levy a tax under Article 3A of Chapter 69 of the General Statutes in the Icard Fire District at a rate not exceeding fifteen cents (15¢) on the one hundred dollar ($100.00) valuation of property, for the purpose of providing fire protection in that district.

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

HOUSE BILL 1510:
Icard Fire Tax Rate

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Buchanan
Date:	June 12, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1510 authorizes the Icard fire district to levy an ad valorem tax at a rate not exceeding fifteen cents on the $100.00 valuation of property for the purpose of providing fire protection in that district. The act is effective when it becomes law.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. A fire protection district is a unit of local government and is governed by the board of county commissioners, or joint boards of county commissioners when the area lies in more than one county. Article V, Section 2(5) of the NC Constitution allows the General Assembly to authorize units of local government to levy taxes on property. Article 3A of Chapter 69 of the General Statutes authorizes a fire protection district to levy a special tax on all taxable property in the district at a rate not exceeding 15 cents on the $100 valuation of property, subject to a referendum. Upon the petition of 35% of the property owners within a fire district, the board shall call an election for the purpose of submitting to the qualified voters the question of levying and collecting a special tax on all taxable property within the district for fire protection.

The current Icard Fire District tax rate is 5 cents on $100.00 valuation of property.

BILL ANALYSIS: House Bill 1510 authorizes the Board of Commissioners of Burke County to levy a tax in the Icard Fire District, without holding a referendum, at a rate not exceeding fifteen cents on the $100.00 valuation of property for the purpose of providing fire protection in that district. Current plans are to increase the rate from 5 cents to 10 cents on $100.00 valuation of property.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1510 (First Edition)

SHORT TITLE: Icard Fire Tax Rate

SPONSOR(S): Representative Buchanan

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Burke County*	$231,750	$238,703	$245,864	$253,239	$260,837

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Burke County Government

EFFECTIVE DATE: When it becomes law.

*Assumes a 10 cents on one hundred dollar valuation in property tax rate.

BILL SUMMARY: The bill allows the Board of Commissioners of Burke County to levy an ad valorem tax at the general law rate in the Icard Fire District at a rate not exceeding fifteen cents on the one hundred dollar valuation of property, for the purpose of providing fire protection in that district.

ASSUMPTIONS AND METHODOLOGY: The current Icard Fire District tax rate is 5 cents on one hundred dollar valuation in property. The fire district received $168,120 in fiscal year 1999-00 and $174,330 in fiscal year 2000-01. With one month's collections remaining, estimates for fiscal year 2001-02 are approximately $225,000. Most of this 29% increase is due to a property revaluation in the county in 2001.

The legislation states the maximum tax rate is 15 cents on the one hundred dollar valuation of property. Current plans are to increase to 10 cents on one hundred dollar valuation in property, representing a 100% increase in the Icard Fire District tax rate. The estimated total revenue generated in the first year, assuming a July 1, 2002 implementation date, would be $463,500. The difference in revenue generated between the current 5 cent rate and this increased 10 cent rate would be $231,750 in the first year. A 3% annual increase in revenue from the fire district is assumed.

SOURCES OF DATA: Burke County Finance Director, Paul Ijames

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 6, 2002

MINUTES
HOUSE FINANCE COMMITTEE

June 13, 2002

The House Committee on Finance met on Thursday, June 13, 2002 in Room 544 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairmen Allen, Buchanan and Luebke and Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, McComas, McCombs, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, and Womble. The following Sergeant-at-Arms staff was present: Bob Fowler, Bill Freeman, and Dusty Rhodes. Staff including Richard Bostic, Trina Griffin, Canaan Huie, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and introduced the following pages: Alicia Davis, Wake County, sponsored by Representative Blue, Justin Ritchie, Rowan County, sponsored by Representative McCombs and Nick Clarke, Mecklenburg County, sponsored by Speaker Black.

Representative Holliman, bill sponsor HB 1509, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS, was recognized by Chairman Buchanan to explain the bill. Representative Holliman explained the bill was a recommendation of the Revenue Laws Study Committee and after giving a brief explanation of the changes and clarifications in the tax laws, Representative Hill, Vice Chair, motioned at the appropriate time to give HB 1509 a favorable report. Representative Decker asked questions regarding price and number of generators, type of equipment that were going to be sold and if any other type of equipment was going to be excluded. Trina Griffin explained that the types of equipment that were going to be exempt are vaccines, insecticides, etc. and there was no extra equipment to be excluded that weren't already excluded. Representative Decker asked the cost involved. Linda Millsaps explained the fiscal note. Upon the motion on the floor from Representative Hill, the bill was given a favorable report. A copy of HB 1509, summary and fiscal note is attached.

Chairman Buchanan turned the gavel over to Representative Luebke, Co-Chair. Chairman Luebke recognized Representative Buchanan, sponsor of HB 1510, A BILL TO BE ENTITLED AN ACT TO ALLOW THE ICARD FIRE DISTRICT TO LEVY AN AD VALOREM TAX AT THE GENERAL LAW RATE, to explain the bill. Representative Buchanan stated that the fire department, county commissioners, rescue squad and the fire chief all were in favor of this legislation and asked that he introduce a bill. He explained that the bill authorizes the Burke County Board of Commissioners to levy a tax in the Icard Fire District from 5 cents to 10 cents not to exceed 15 cents on $100.00 valuation of property as all other counties in the state already are authorized to have. Representative Buchanan said they were only requesting 6 cents. Representative Wilson informed Representative Buchanan that there should have been a referendum. Representative Buchanan explained that there wasn't time because of the budget deadline. Representative Starnes asked why the referendum wasn't done at the same time the bond election was held. Representative Buchanan stated that the fire district and commissioners, county attorney, etc. only realized since the election that the

increase was needed. Representative Wilson asked if the entire delegation agreed. He assured her that he did speak with them. Representative Womble was recognized for a question regarding why the tax was for 10 cents if they were only asking for 6 cents. Representative Buchanan responded that all other counties in the state can go up to 10 cents but the county commissioners requested only 6 cents. Representative Womble ask if everyone was in agreement. Representative Buchanan stated that everyone he had spoken to agreed and Representative Womble then moved that HB 1510 be given a favorable report. Representative Capps agreed that our firefighters needed all the support for their contributions and seconded the motion. The motion passed. Representative Rayfield asked if Representative Gillespie agreed. Representative Buchanan said he did speak with him and at the time neither of them were sure of the cap that had been placed on it. A copy of HB 1510, summary and fiscal note is attached.

HB 1520 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS, continued from June 12th Finance meeting was the last bill on the agenda. Chairman Buchanan recognized Representative Allen, bill sponsor, for further discussion of the bill. Representative Hill made a motion to give the bill a favorable report at the appropriate time. Representative Decker asked several questions of the staff. Mr. Sam Taylor, Executive Director, North Carolina Biosciences Organization answered questions from several members. After a lengthy discussion, Representative Decker asked for a list of the grantees for the past three years from the groups listed in GS 105-163.010. Richard Bostic, staff analyst Fiscal Research, said there was a small percentage of 31 out of 185 (16.7%), which refers to the number of Qualified Grantee Businesses out of the total number of firms listed by the Secretary of State as eligible to receive investments from persons who apply for tax credits for Qualified Business Investments. Representative Pope said he had a concern with businesses being deemed Qualified Grantee Businesses if they received assistance from the groups listed in GS 105-163.010 (NC Technological Development Authority, Microelectronics Center of NC, etc.) He requested time for the staff to prepare an amendment to change that statute. At the request of Representative Allen, Chairman Buchanan pulled HB 1520 from the calendar to be heard on Wednesday, June 19th in order for the staff to have time to prepare the amendment.

Chairman Buchanan adjourned the meeting at 9:05 a.m. to reconvene Wednesday, June 19, 2002.

Respectfully submitted,

Representative Charles Buchanan
Chairman

Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

June 13, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1520 **Extend Qualified Business Venture Tax Credit – Rep. Allen (Revenue Laws)**

HB 1510 **Icard Fire Tax Rate – Rep. Buchanan**

HB 1509 **Revenue Administrative Changes – Rep. Holliman (Revenue Laws)**

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JUNE 13, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joan Piercy	Capitol Group
Kate Hunter	NC State Watch
R. Paul Wilms	NCHBA
Ashley Heaton	NC Bar Assn.
Andy Sabol	NC DOR
[illegible]	[illegible]
[illegible]	[illegible]
Bill Spencer	NCDOR
John Phelps	NCLM
Michael Thompson	Dominion NC Power
Mary Catherine Jackson	Rep. Insurance

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JUNE 13, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diana Lukins	[illegible]
Monica Jon	CED
Sam Taylor	NCBIO
Jim Blackburn	NC Association of County Commissioners
Ed Turlington	Kilpatrick Stockton
Angie Hall	NTE
[illegible]	NC [illegible]
Jon Hobart	NC Doc
David Barnes	Parker Poe [illegible] LLP
Katherine Davis	ElectriCities
John McHugh	[illegible]

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JUNE 13, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	OSBM
[signature]	NC Home Builders
Michelle Frazier	NC Bar Ass'n
John McMillan	MFAS PA
Hal Miller	DENR/CCT
[signature]	[signature]

6/13/02

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1509 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1509

Short Title:	Revenue Administrative Changes.	(Public)
Sponsors:	Representatives Holliman, Luebke, Wainwright; Allen, Buchanan, Hill, and Jarrell.	
Referred to:	Finance.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes:~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.
b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
c. Defoliants for use on cotton or other crops.
d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

SECTION 2. G.S. 105-164.16(b) reads as rewritten:

"(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the ~~15th~~last day of the month following the end of the quarter."

SECTION 3. G.S. 105-164.16(b2) reads as rewritten:

"(b2) Semimonthly. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last

day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.

A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the ~~amount due for each semimonthly payment period~~ lesser of the following and includes the underpayment with the monthly return for those semimonthly payment ~~periods.~~periods:

(1) The amount due for each semimonthly payment period.

(2) The average semimonthly payment for the prior calendar year."

SECTION 4. Part 5 of Article 5 of Chapter 105 is amended by adding a new section to read:

"**§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale."

SECTION 5. Section 2 of this act becomes effective October 1, 2002, and applies to taxes levied on or after that date. Section 3 of this act becomes effective July 1, 2002, and applies to payments due on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1509:
Revenue Administrative Changes

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Reps. Holliman, Luebke, and Wainwright
Date:	June 12, 2002	**Summary by:**	Trina Griffin Committee Counsel
Version:	1st Edition		

SUMMARY: House Bill 1509 is a recommendation of the Revenue Laws Study Committee and makes the following changes and clarifications in the tax laws:

- *It clarifies that the sales and use tax exemption for certain agricultural substances does not include any equipment or devices used to apply those substances.*
- *It changes the due date of quarterly sales tax returns from the 15th of a month to the last day of a month to enable the Department to spread the processing work more evenly throughout the month.*
- *It changes the underpayment penalty calculation for semimonthly sales tax payers to conform to the requirements of the Streamlined Sales Tax Project.*
- *It clarifies the use of sales and use tax exemption certificates.*

CURRENT LAW & ANALYSIS:

I. Clarifying the Exemption for Certain Agricultural Substances

CURRENT LAW: Included among the agricultural group of sales and use tax exemptions is an exemption for plant growth inhibitors, regulators, or stimulators when purchased for use on plants held or produced for commercial purposes. This exemption was at issue in a recent North Carolina Court of Appeals case, *American Ripener Company, Inc. v. Secretary of Revenue*.[1] In this case, the plaintiff manufactured and sold ethylene concentrate, a plant growth regulator or stimulator that controls the speed of the ripening of fruits and vegetables. The plaintiff also manufactured, sold, and leased generators used to control the release of the ethylene gas. The plaintiff challenged the assessment of sales tax on its sales of ethylene and the assessment of use tax for its generators and replacement parts for its generators. The Department argued that the exemption was not intended to include any hardware or machinery, such as generators, used to apply the exempted substances. Nevertheless, the Court held that since the generators were used to control the release of ethylene gas and to regulate the speed of the ripening of fruits and vegetables, they were plant growth regulators and stimulators and, therefore, exempt from the sales and use tax. The Department's petition for review by the North Carolina Supreme Court was denied. The Department has recommended amending this exemption to clarify that it does not apply to any equipment or devices used to dispense the substances listed in the exemption.

[1] 147 N.C.App. 142 (2001), *cert. denied*, 355 N.C. 210 (2002).

BILL ANALYSIS: G.S. 105-164.13(2a) exempts the following from sales and use tax when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:

- Remedies, vaccines, medications, litter materials, and feeds for animals.
- Rodenticides, insecticides, herbicides, fungicides, and pesticides.
- Defoliants for use on cotton or other crops.
- Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.

Section 1 of the bill clarifies that only these substances, and not any equipment or devices used to administer, release, apply, or otherwise dispense these substances, are exempt from the sales and use tax.

II. Due Date for Quarterly Sales Tax Returns

CURRENT LAW: Quarterly sales tax returns are due on the 15th of a month. In 2001, the General Assembly lowered the threshold for monthly payments of withheld taxes from $500 to $250. Monthly withholding returns are due on the 15th of the month, the same day as monthly and quarterly sales and use tax returns. As a result of the monthly threshold change, approximately 25,000 employers moved from a quarterly to a monthly filing status. The Department now receives 25,000 more returns in eight of the twelve months of the year than it was receiving prior to the change. Therefore, the Department has recommended changing the due date of quarterly sales tax returns from the 15th of a month to the end of the month to enable the Department to spread the work more evenly throughout the month. Currently, there are 91,000 quarterly sales tax filers.

BILL ANALYSIS: Section 2 of the bill changes the due date for quarterly sales tax returns from the 15th of a month to the end of a month. This change would make the due date for quarterly sales tax returns consistent with the due date for quarterly withholding tax returns. This change would not impact the timing of local sales and use tax distributions, nor would it shift any funds from one fiscal year to the next.

III. Underpayment Penalty Calculation for Semimonthly Sales Tax Payers

CURRENT LAW: A taxpayer who is consistently liable for at least $10,000.00 a month in State and local sales and use taxes must pay the tax twice a month and file a return on a monthly basis. A payment is required for each semimonthly period. The first semimonthly payment covers the period from the first day of the month through the 15th day of the month, and the second semimonthly payment covers the period from the 16th day of the month through the last day of the month. The monthly return covers both semimonthly payment periods with any additional amount due and is due to be filed by the 20th day of the following month. A taxpayer is not subject to interest or penalties for an underpayment for a semimonthly payment

period if the taxpayer timely pays at least 95% of the amount due for that payment period and includes the underpayment with the monthly return for both payment periods.

In 2000, the General Assembly enacted legislation to enable North Carolina to participate in the Streamlined Sales Tax Project, which is designed to simplify and modernize sales and use tax administration. There are certain requirements that each state must adopt in order to participate in the project. One requirement with regard to the remittance of funds is that if the State requires more than one remittance per return, the amount of the additional remittance must be determined through a calculation method rather than actual collections. Since semimonthly sales tax payers are required to send two remittances per month with one monthly return, the Department has recommended amending the underpayment penalty calculation for semimonthly sales tax payers which would provide an additional method of calculating their estimated tax liability and thus conform to the requirements of the Streamlined Sales Tax Project.

BILL ANALYSIS: Section 3 of the bill amends the method for calculating the underpayment penalty for semimonthly sales tax payers. Neither interest nor penalties would apply to the underpayment of sales tax remitted on a semimonthly basis if the taxpayer timely pays at least 95% of the lesser of the following:

- The amount due for the semimonthly payment period; or
- The average semimonthly payment for the prior calendar year.

Just as under the current law, the taxpayer must also include the underpayment with the monthly return for those semimonthly payment periods.

IV. Use of Exemption Certificates

CURRENT LAW: The Department of Revenue administers many of the sales and use tax exemptions and preferential rates targeted at certain industries, such as farming and manufacturing, through the use of an exemption certificate. The statutes do not address exemption certificates, however, except in the penalty provisions in G.S. 105-236(5a), which authorizes the Secretary to assess a penalty for the misuse of an exemption certificate. The Department has recommended that the practice of using exemption certificates be incorporated into the statutes to avoid any questions about the ability of taxpayers to claim exemptions through this method.

BILL ANALYSIS: Section 4 of the bill would codify a longstanding practice of the Department which requires that a purchaser of tangible personal property that is exempt from tax or subject to a preferential rate of tax obtain an exemption certificate from the Department in order to receive the exemption or preferential rate.

EFFECTIVE DATES: The section changing the due date for quarterly sales tax returns (Section 2) would become effective on October 1, 2002, and would apply to taxes levied on or after that date. The section changing the underpayment penalty calculation for semimonthly sales tax payers (Section 3) would become effective July 1, 2002, and would apply to payments due on or after that date. The remainder of the act would become effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1509 (1st Edition)

SHORT TITLE: Revenue Administrative Changes

SPONSOR(S): Rep. Holliman

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	Potential Revenue Change – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue.

EFFECTIVE DATE: Section 2 and 3 (quarterly sales tax returns) become effective October 1, 2002 and applies to taxes levied on or after that date. The remainder of the act becomes effective when law.

BILL SUMMARY: This proposal includes several changes recommended by the North Carolina Department of Revenue. Section 1 clarifies that equipment used to dispense plant growth inhibitors is not exempt from sales tax. Section 2 changes the due date for quarterly sales tax returns from the 15th of the month to the last day of the month, following the end of the quarter. Section 3 changes the underpayment penalty calculation for semimonthly taxpayers to conform to the Streamlined Sales Tax Project. Section 4 clarifies the use of sales and use tax exemption certificates. It is recommended by the Revenue Laws Study Committee.

ASSUMPTIONS AND METHODOLOGY:

Section 1: This proposal is a result of a North Carolina Court of Appeals decision. In American Ripener Co. Inc. v. Muriel K. Offerman, Secretary of Revenue, the court considered the application of state sales taxes to a plant growth regulator or stimulator which controls the ripening of fruits and vegetables (ethylene), as well as the equipment used to deliver that chemical. Tax on replacement parts was also an issue. The court held that all of these items are exempt from sales and use tax under G.S. 105-164.13(2) and G.S. 105-164.13 (2a) which exempts "plant growth inhibitors, regulators, or stimulators for agriculture including systematic and contact or other sucker control agents for tobacco and other crops". The court also ruled that the generators and associate parts are also inhibitors and are therefore exempt from sales tax. The proposal effectively amends G.S. 105-164.13(2a) to make the equipment and parts associated with this gas treatment subject to sales and use taxes. (The Department had previously assumed all these items were taxable). In making its ruling, the court effectively reduced sales tax revenue. The bill would restore at least some of that

revenue to the General Fund. As such, the bill in and of itself would create a small revenue gain. However, Fiscal Research is unable to create an exact estimate of the value of ethylene delivery parts and equipment. As a result, no estimate is possible on this portion of the proposal.

Section 2: Currently the Department of Revenue receives monthly withholding returns, monthly sales tax returns, and quarterly sales tax returns on the 15th of the month. On the 15th of March, April, September, and October income tax returns are due as well. Shifting the due date of quarterly sales and use tax returns from the 15th of the month to the end of the month will create a more even distribution of work in the Department. Because the payments are due in the month following the end of the quarter (October, February, April, and July) the shift will not move any revenue from one fiscal year to the next. Some loss of interest on the payments or "float" will occur. However, because of the relatively small sums of money involved, the Department expects the loss to be minimal.

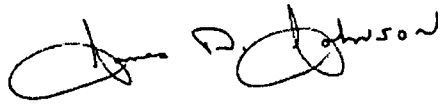
Section 3: This section changes the calculation of penalty for underpayment by semimonthly sales tax payers. Under current law the taxpayer must remit at least 95% of the amount due for each semimonthly payment period. This proposal allows the taxpayer to remit the lesser of this amount or the average semimonthly payment for the prior calendar year. Clearly this proposal will result in some loss of penalty revenue. However, no data is available to determine the magnitude of the loss. The Department expects the loss to be slight.

Section 4: Historically the Department of Revenue has issued exemption certificates to taxpayers in certain exempted industries to facilitate tax administration. However, there is no reference to exemption certificates in the statutes, except as it relates to penalties for misuse of such a certificate. This proposal would codify the practice of issuing exemption certificates. Since the proposal is only codifying the existing practice of the Department, no fiscal impact is expected.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: James D. Johnson



DATE: June 6, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT
(Chair/Chairs) for the Committee on FINANCE .

☐ Committee Substitute for
H.B. 1510 A BILL TO BE ENTITLED AN ACT TO ALLOW THE ICARD FIRE DISTRICT TO LEVY AN AD VALOREM TAX AT THE GENERAL LAW RATE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1510*

Short Title:	Icard Fire Tax Rate.	(Local)
Sponsors:	Representatives Buchanan; and Thompson.	
Referred to:	Finance.	

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE ICARD FIRE DISTRICT TO LEVY AN AD VALOREM TAX AT THE GENERAL LAW RATE.

The General Assembly of North Carolina enacts:

SECTION 1. The Board of Commissioners of Burke County may levy a tax under Article 3A of Chapter 69 of the General Statutes in the Icard Fire District at a rate not exceeding fifteen cents (15¢) on the one hundred dollar ($100.00) valuation of property, for the purpose of providing fire protection in that district.

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

HOUSE BILL 1510:
Icard Fire Tax Rate

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Buchanan
Date:	June 12, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1510 authorizes the Icard fire district to levy an ad valorem tax at a rate not exceeding fifteen cents on the $100.00 valuation of property for the purpose of providing fire protection in that district. The act is effective when it becomes law.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. A fire protection district is a unit of local government and is governed by the board of county commissioners, or joint boards of county commissioners when the area lies in more than one county. Article V, Section 2(5) of the NC Constitution allows the General Assembly to authorize units of local government to levy taxes on property. Article 3A of Chapter 69 of the General Statutes authorizes a fire protection district to levy a special tax on all taxable property in the district at a rate not exceeding 15 cents on the $100 valuation of property, subject to a referendum. Upon the petition of 35% of the property owners within a fire district, the board shall call an election for the purpose of submitting to the qualified voters the question of levying and collecting a special tax on all taxable property within the district for fire protection.

The current Icard Fire District tax rate is 5 cents on $100.00 valuation of property.

BILL ANALYSIS: House Bill 1510 authorizes the Board of Commissioners of Burke County to levy a tax in the Icard Fire District, without holding a referendum, at a rate not exceeding fifteen cents on the $100.00 valuation of property for the purpose of providing fire protection in that district. Current plans are to increase the rate from 5 cents to 10 cents on $100.00 valuation of property.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1510 (First Edition)

SHORT TITLE: Icard Fire Tax Rate

SPONSOR(S): Representative Buchanan

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Burke County*	$231,750	$238,703	$245,864	$253,239	$260,837

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Burke County Government

EFFECTIVE DATE: When it becomes law.

*Assumes a 10 cents on one hundred dollar valuation in property tax rate.

BILL SUMMARY: The bill allows the Board of Commissioners of Burke County to levy an ad valorem tax at the general law rate in the Icard Fire District at a rate not exceeding fifteen cents on the one hundred dollar valuation of property, for the purpose of providing fire protection in that district.

ASSUMPTIONS AND METHODOLOGY: The current Icard Fire District tax rate is 5 cents on one hundred dollar valuation in property. The fire district received $168,120 in fiscal year 1999-00 and $174,330 in fiscal year 2000-01. With one month's collections remaining, estimates for fiscal year 2001-02 are approximately $225,000. Most of this 29% increase is due to a property revaluation in the county in 2001.

The legislation states the maximum tax rate is 15 cents on the one hundred dollar valuation of property. Current plans are to increase to 10 cents on one hundred dollar valuation in property, representing a 100% increase in the Icard Fire District tax rate. The estimated total revenue generated in the first year, assuming a July 1, 2002 implementation date, would be $463,500. The difference in revenue generated between the current 5 cent rate and this increased 10 cent rate would be $231,750 in the first year. A 3% annual increase in revenue from the fire district is assumed.

SOURCES OF DATA: Burke County Finance Director, Paul Ijames

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 6, 2002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1520
PROPOSED COMMITTEE SUBSTITUTE H1520-PCS7345-SC-27

Short Title: Extend Qualified Business Venture Tax Credit. (Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, 2004."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1520*

Short Title:	Extend Qualified Business Venture Tax Credit.	(Public)
Sponsors:	Representatives Allen, Luebke (Primary Sponsors); Buchanan, Hill, Holliman, Jarrell, McComas, Wainwright, Alexander, Cox, Dedmon, Edwards, Hurley, Morris, and Weiss.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

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A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of

the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Article is repealed effective for investments made on or after January 1, 2004."

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

HB 1520
Extend Qualified Business Venture Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Allen
Date:	June 12, 2002	**Analysis by:**	Y. Canaan Huie
Version:	PCS for 1st edition		Staff Attorney

SUMMARY: ***This bill extends the sunset for the tax credit for qualified business investments for one year. Without this bill, that tax credit would expire for investments made on or after January 1, 2003. This bill is effective when it becomes law. The PCS makes a technical change.***

ANALYSIS: The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individuals taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. In 1998, as part of the appropriations bill, the credit was extended for four additional years until January 1, 2003. This bill would extend that sunset for one additional year.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. In general, a taxpayer forfeits the credit if the taxpayer transfers the securities within one year or the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made.[1]

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because they reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in either a North Carolina business or an investment company whose purpose is to invest in North Carolina businesses, while no tax reduction was allowed for purchasing similar stock

[1] There are two exceptions to this forfeiture provision. First, if the transfer occurs as a result of the death of the taxpayer, the liquidation of the taxpayer, or certain reorganizations of the qualified business, within the one-year period, the transfer does not require forfeiture. Second, the 1998 legislation created an exception to this forfeiture provision for projects in the film industry. It is unusual for a project in that industry in which a person might invest to last for more than 5 years.

in out-of-state businesses or investment companies whose purpose is to invest in businesses that may not be North Carolina businesses. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit along with several others, at great length. The original proposal of the Committee was to repeal all qualified business investment credits, effective January 1, 1997. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include investments in businesses located both inside and outside North Carolina, but was no longer allowed for investments in investment companies and was limited to investments made by individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50-mile radius of their home.

There may be a constitutional concern with the provision of the credit regarding "qualified grantee businesses". In order to be a business in which investments are eligible for a credit, the business must be either a "qualified business venture" or a "qualified grantee business". Both types of businesses must be registered with the Secretary of State. The definition of "qualified business venture" includes several general requirements related to the line of business, gross revenues of the business, and the organization date of the business. The definition of "qualified grantee business" includes a requirement that the business have received a grant in at least one of the three previous years from one of several named entities. One could argue that this provision violates the rule of uniformity since a credit is allowed only for investments in business that have received a grant from one of several specifically named organizations, and not for investments in similar businesses that have received grants from similar organizations. However, to date this issue has not been raised in litigation and is therefore not settled.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: June 7, 2002

TO: House Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: HB 1520 PCS - Extend Qualified Business Venture Tax Credit

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FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund		($6,000,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State

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

BILL SUMMARY: The bill extends the individual income tax credit for Qualified Business investments from January 1, 2003 to January 1, 2004.

ASSUMPTIONS AND METHODOLOGY: The amount of Qualified Business credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in

2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on tax returns filed in the spring of 2004.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS:

Minutes
House Committee on Finance

June 19, 2002

The House Committee on Finance met on Wednesday, June 19, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building.

Representative William Wainwright, presiding Chair, called the meeting to order. The following members were present: Chairmen Gordon Allen, Monroe Buchanan, and Paul Luebke, Vice-Chairs Dewey Hill and Mary Jarrell, and Representatives Martha Alexander, John Blust, Russell Capps, Leslie Cox, Andrew Dedmon, Rick Eddins, Zeno Edwards, Pryor Gibson, Joe Hackney, Hugh Holliman, Bill Hurley, Linda Johnson, Eugene McCombs, Ed McMahan, Art Pope, John Rayfield, Edgar Starnes, Jennifer Weiss, Shelly Willingham, Larry Womble, and Pete Cunningham. Staff in attendance included Cindy Avrette, Trina Griffin, Martha Walston. Richard Bostic, Linda Millsaps, and Stephanie Schmitt. A Visitor Registration list is attached and made part of these minutes.

Chairman Wainwright called the meeting to order and introduced the following pages: Michelle Bennett, Jessica Bridgers, Allison Kiser, and Kathleen Hall.

The following bills were considered:

HB 1613, A BILL TO BE ENTITLED AN ACT TO REVISE THE BOUNDARIES OF THE HARTSEASE AND HARRISON FIRE TAX DISTRICTS IN EDGECOMBE COUNTY. Representative Tolson, bill sponsor, explained the bill. In 1995, the General Assembly enacted legislation that altered the boundaries by expanding the Hartsease fire district and reducing the Harrison fire district. House Bill 1613 will restore the boundaries to the way they were prior to the 1995 legislation. Upon motion of Representative Allen, the Committee voted for a favorable report. Copies of the bill and summary are attached.

HB 1578, A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE SCRAP TIRE DISPOSAL TAX. Representative Gibson, bill sponsor, explained that this bill would repeal the June 30, 2002, sunset; thus making permanent the current 2% tax rate on tires with a bead diameter of less than 20 inches. Upon motion made by Representative Hackney, the Committee voted for a favorable report. Copies of the bill, summary, and fiscal note are attached.

HB 1482, A BILL TO BE ENTITLED AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE CITY OF SALUDA. The bill sponsor, Representative Larry Justus, explained that this is a local bill that removes a small area containing 40.34 acres from the corporate limits of Saluda in Polk County. He said the Board of Commissioners voted to support the owners' request that the tract be de-annexed from the City, as preliminary engineering revealed that the City of Saluda could not afford to

fund the extension of city water and sewer service to the tract. By motion made by Representative Buchanan, the Committee voted for a favorable report. Copies of HB 1482 and summary are attached.

HB 1587, A BILL TOA BE ENTITLED AN ACT TO ANNEX DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE. Representative Edith Warren, sponsor of the bill, explained that House Bill 1587 would annex a one-half acre tract of land containing a Carolina Power and Light substation to the corporate limits of the Town of Farmville without the town having to meet the statutory requirements for annexation. She explained that Farmville has recently completed three voluntary annexations of land surrounding the CP&L substation, and once the annexation of this "hole" is complete, the property containing the CP&L substation will be completely surrounded by city property. Upon the motion of Representative Womble, the Committee voted for a favorable report. Copies of the bill and summary are attached.

HB 1626, A BILL TO BE ENTITLED AN ACT TO MODIFY THE BUSINESS OPERATIONS OF THE HOSIERY TECHNOLOGY CENTER AT CATAWBA VALLEY COMMUNITY COLLEGE. The bill's sponsor, Representative Buchanan, explained that the Hosiery Technology Center at Catawba Valley Community College provides technical services to the hosiery manufacturers in North Carolina. These services include product testing, research and development, and training. Since January 2002, the Center has collected fees for product testing. The fees cover the actual cost of testing, including staff hours, materials, and equipment. Currently, the receipts collected by the Center go into the Catawba Valley's Institutional Fund account. House Bill 1626 would allow the Hosiery Center to retain receipts collected for product testing services and use them for operating expenses. Paul Fogleman with Carolina Hosiery Association; Dan St. Louis, Director of the Hosiery Technology Center; and Kenan Briggs, Chief Finance Officer of the Community College System, spoke in favor of the bill and answered questions from several committee members. Upon motion of Representative Rayfield, the Committee voted for a favorable report. Copies of the bill and summary are attached.

There being no further business, Chairman Wainwright adjourned the meeting at 9:30 A.M.

Respectfully submitted,

William L. Wainwright

Representative William L. Wainwright
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

House Bills 1613, 1578, 1482, 1587, and 1626
Committee Report
Visitor Registration Sheet

AGENDA

House Finance Committee

June 19, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1578	**Remove Scrap Tire Sunset – Rep. Gibson**
HB 1482	**Saluda Deannexation – Rep. Justus**
HB 1587	**Farmville Annexation – Rep. Warren**
HB 1613	**Harrison/Hartsease Fire District Boundaries – Rep. Tolson**
HB 1626	**Catawba Community College/Hosiery Tech. Center – Rep.Buchanan**

ADJOURNMENT

VISITOR REGISTRATION SHEET

House Finance — 6-19-02
Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	County Commissioners Assoc
Mary H. Odom	AARP
Robert E. Smith	NC Tire Dealers & Retreaders Assoc.
RAY WALKER	MORETZ INC. - W. 21st ST. - Newton, N.C
LISA Crump	Monarch Intl. - 19001855 Charlotte NC 28208 Hosiery Assoc
DENNIS MARTIN	North Carolina Sock Co, 1222 FAUE St Hickory
Rachel Willis	UNIV. of NORTH CAROLINA
Allan Russ	NCSOS
Don McCorquodale	SAS
Bryan Francis	Mecklenburg County
Rusty Holt	Holt Hosiery Mills Burlington, NC
Ralph Holt	" " " " "
VANCE RICHARDSON	Clayton Knitting Co. Inc. P.O. Box 39 Star, N.C. 27356
Diana Wilkins	Mercer & Assoc
Mary Katherine Hackney	Rep. Hackney
Sabra Faires	N.C Revenue
Andy Sabol	" "
LYMAN Cooper	CSX corp.
Butch Gunnells	NCSDA
Steve Woodson	NC Farm Bureau

VISITOR REGISTRATION SHEET

House Finance — 6-19-02

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ken Melton	Alley Associates, Inc.
Paul Meyer	NCACC
Jim Blackburn	NCACC
Angie Harris	MTE
Paul Cunningham	NC DENR
Sally Kay	The Hosiery Association
Dan St. Louis	The Hosiery Technology Center P.O. Box 1909
Darrell Frye	Harriss & Covington Hosiery High Point 27261 P.O. Box 1830
Joy Sullivan	Zach Hosiery Thomasville N.C. 27361
Charles Poston	Boehme Filatex 209 Watlington Ind. Dr Reidsville NC 27320 PO Box CD
Mahlon Jackson	Charleston Hosiery Biscoe NC 27209

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1613 A BILL TO BE ENTITLED AN ACT TO REVISE THE BOUNDARIES OF THE HARTSEASE AND HARRISON FIRE TAX DISTRICTS IN EDGECOMBE COUNTY.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1613

Short Title:	Harrison/Hartsease Fire District Boundaries.	(Local)
Sponsors:	Representative Tolson.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO REVISE THE BOUNDARIES OF THE HARTSEASE AND HARRISON FIRE TAX DISTRICTS IN EDGECOMBE COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 187 of the 1995 Session Laws reads as rewritten:

"Section 1. The boundaries of the Heartsease Fire Tax District in Edgecombe County are as follows:

HEARTSEASE FIRE TAX DISTRICT

~~BEGINNING at point (1) on N. C. Highway 97, 1.0 miles east of its intersection with S.R. 1404 (New Hope Church Road) and said beginning point also being in the common boundary of Heartsease Volunteer Fire Department Fire Tax District and the Leggett Volunteer Fire Department Fire Tax District and thence running southwesterly with the line of the existing Leggett Volunteer Fire Department Fire Tax District and following the Tar River to point (2) where the Tar River intersects with the Town of Tarboro Corporate Limits; thence running Southwesterly with the Town of Tarboro Corporate Limits to point (3) at the intersection of U.S. Highway 64 Alternate and N.C. Highway 33; thence running along and with the Town of Tarboro Corporate Limits westerly to point (4) on U.S. Highway 64 Alternate 1.1 miles west of its intersection with S.R. 1207 (McNair Road); thence running southerly along and with the Town of Tarboro Corporate Limits and line of the Princeville Volunteer Fire Department Fire Tax District to point (5) at the intersection of S.R. 1207 (McNair Road) and S.R. 1208 (Howard Avenue Extension); thence running in a westerly direction following the centerline of S.R. 1208 (Howard Avenue Extension) and along the line of the Princeville Volunteer Fire Department Fire Tax District to point (6) on S.R. 1208 (Howard Avenue Extension), 0.3 miles southwest of its intersection with S.R. 1225 (Kingsboro Road); thence continuing with the line of the Princeville Volunteer Fire Department Fire Tax District northwesterly to point (7) on S.R. 1223 (Antioch Road), a point which is 1.3 miles southwest of its intersection with S.R. 1225 (Kingsboro Road)~~

~~and also being a point in the line of the West Edgecombe Volunteer Fire Department Fire Tax District; thence running northwesterly with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to point (8), on S.R. 1226 (Melton Road), 0.7 miles south of its intersection with U. S. Highway 64 Alternate; thence continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District in a southwesterly direction to point (9) on U. S. Highway 64 Alternate, 0.4 miles west of its intersection with S.R. 1226 (Melton Road); thence running in a northerly direction continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to and with Tar River to point (10) on N. C. Highway 97, 0.2 miles northwest with its intersection with Leggett Road and also being in the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District; thence running northeasterly along and with the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District to point 11 on S.R. 1407 (Battleboro Leggett Road), 1.2 miles northwest of its intersection with S.R. 1408 (New Hope Church Road); thence continuing with the Battleboro Volunteer Fire Department Harrison Fire Tax District northerly and southerly to the line of the Leggett Volunteer Fire Department Fire Tax District and along the Leggett Volunteer Fire Department Fire Tax District line to point (12) of S.R. 1407 (Battleboro Leggett Road), 0.4 miles southeast of its intersection with S.R. 1208 (New Hope Church Road) and thence continuing along and with the Leggett Volunteer Fire Department Fire Tax District southeasterly to point (1) the point of beginning, all as the same appears on a map on file in the Office of the Emergency Services Coordinator of Edgecombe County in the Edgecombe County Administrative Offices at 201 St. Andrews Street in Tarboro, North Carolina and which has been signed and dated by the Edgecombe County Emergency Services Coordinator, the Chief of the Heartsease Volunteer Fire Department and the President of the Edgecombe County Association of Volunteer Fire Departments.~~Beginning at point (1) on NC Highway 97, 1.0 miles east of its intersection with S.R. 1408 (New Hope Church Road) and said beginning point also being in the common boundary of Heartsease Volunteer Fire Department Fire Tax District and the Leggett Volunteer Fire Department Tax District and thence running southeasterly with the line of the existing Leggett Volunteer Fire Department Fire Tax District and following the Tar River to point (2) where the Tar River intersects with the Town of Tarboro Corporate Limits; thence running Southwesterly and Westerly with the Town of Tarboro Corporate Limits to point (3) on US Highway 64 Alternate 1.1 miles west of its intersection with SR 1207 (McNair Road); thence running southerly along and with the Town of Tarboro Corporate Limits and line of the Princeville Volunteer Fire Department Fire Tax District to point (4) at the intersection of SR 1207 (McNair Road) and SR 1208 (Howard Avenue Extension); thence running in a westerly direction following the centerline of SR 1208 (Howard Avenue Extension) and along the line of the Princeville Volunteer Fire Department Fire Tax District to point (5) on SR 1208 (Howard Avenue Extension), 0.3 miles southwest of its intersection with SR 1225 (Kingsboro Road); thence continuing with the line of the Princeville Volunteer Fire Department Fire Tax District northwesterly to point (6) on SR 1223 (Antioch Road), a point which is 1.3 miles southwest of its intersection with SR 1225 (Kingsboro Road), and also being a point in the line of the West

Edgecombe Volunteer Fire Department Fire Tax District; thence running northwesterly with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to point (7) on SR 1226 (Melton Road), 0.7 miles south of its intersection with US Highway 64 Alternate; thence continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District in a southwesterly direction to point (8) on US Highway 64 Alternate, 0.4 miles west of its intersection with SR 1226 (Melton Road); thence running in a northerly direction continuing with the line of the West Edgecombe Volunteer Fire Department Fire Tax District to and with Tar River to point (9) on NC Highway 97, 0.2 miles east of its intersection with Leggett Road and also being in the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District; thence running northeasterly along and with the line of the Battleboro Volunteer Fire Department Harrison Fire Tax District to point (10) on SR 1407 (Battleboro-Leggett Road), 0.3 miles west of its intersection with SR 1408 (New Hope Church Road); thence easterly to point (11), on SR 1407 (Battleboro-Leggett Road), 0.4 mile southeast of its intersection with SR 1408 (New Hope Church Road) including all property between this and the preceding point; thence Southeasterly to point (1), the beginning."

SECTION 2. Section 2 of Chapter 187 of the 1995 Session Laws reads as rewritten:

"Sec. 2. The boundaries of the Harrison Fire Tax District in Edgecombe County are as follows:

HARRISON FIRE TAX DISTRICT
EDGECOMBE COUNTY

~~BEGINNING at point (1) at the common intersection of the Edgecombe County line, the centerline of the CSX Railroad and the Davenport Volunteer Fire Department Fire Tax District which intersection is 1.5 miles along the CSX Railroad north from the corporate limits of Battleboro; thence running in a southeasterly direction along and with the Davenport Volunteer Fire Department Fire Tax District line to point (2), on S.R. 1404 (Seven Bridges Road) 0.1 mile northeast of its intersection with S.R. 1411 (Marriott Road); thence continuing with the line of the Davenport Volunteer Fire Department Fire Tax District line in a southeasterly direction 2.4 miles to point (3) at its intersection with the Leggett Volunteer Fire Department Fire Tax District line; thence running in a southerly direction along and with the Leggett Volunteer Fire Department Tax District line to its intersection with the Heartsease Volunteer Fire Department Fire Tax District line; and thence running along and with the Heartsease Volunteer Fire Department Fire Tax District line in a northeasterly direction and southerly direction to point (4), on S.R. 1407 (Battleboro-Leggett Road), 0.6 miles west of its intersection with S.R. 1415 (Morningstar Church Road); thence continuing with the line of Heartsease Volunteer Fire Department Fire Tax District in a southeasterly direction to point (5), on N.C. Highway 97, 0.2 miles south of its intersection with S.R. 1406 (Coolspring Road), thence continuing with the line of the Heartsease Volunteer Fire Department Fire Tax District line in a southeasterly direction to Tar River, a corner with the Heartsease Volunteer Fire Department Fire Tax District line and the West Edgecombe Volunteer Fire Department Fire Tax District line and then continuing with~~

~~the Tar River and the West Edgecombe Volunteer Fire Tax District line in and to its intersection with the corporate limits of the City of Rocky Mount; and thence running northeasterly and following the corporate limits of the City of Rocky Mount, the Edgecombe County and Nash County lines and CSX Railroad to point (1), the beginning point, all as shown on a map on file in the Office of the Emergency Services Coordinator of Edgecombe County in the Edgecombe County Administrative Offices at 201 St. Andrews Street in Tarboro, North Carolina and which has been signed and dated by the Edgecombe County Emergency Services Coordinator, the Chief of the Battleboro Volunteer Fire Department and the President of the Edgecombe County Association of Volunteer Fire Departments.~~The Harrison Fire Tax District within a part of Edgecombe County is described as being that portion of Edgecombe County bounded by a line beginning at Point (1) at the intersection of the Edgecombe County line and the CSX Railroad line, 1.5 mile north of the Battleboro City limits; thence southeast to Point (2), on SR 1404 (Seven Bridges Road), 0.1 mile northeast of its intersection with SR 1411 (Marriott Road); thence southeasterly 2.4 mile to Point (3), at its intersection with the Leggett Fire Protection District; line to Point (4), on SR 1407 (Battleboro-Leggett Road), 1.5 mile east of its intersection with SR 1415 (Morning Star Church Road); thence southwesterly to Point (5), on NC Highway 97, 0.2 miles east of its intersection with Leggett Road and the Heartsease Fire Protection District line; thence southwesterly following the Tar River to Point (6), where the Tar River intersects with the Rocky Mount City limits; thence northeasterly following the Rocky Mount City limits, Edgecombe, Nash County lines and CSX Railroad to Point (1), to the beginning."

SECTION 3. This act becomes effective June 30, 2002.

HOUSE BILL 1613:
Harrison/Hartsease Fire District Boundaries

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Tolson
Date:	June 19, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1613 revises the boundaries of the Harrison and Hartsease fire tax districts in Edgecombe County by returning the boundaries to their location prior to 1995. The act becomes effective June 30, 2002.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts: insurance districts, tax-supported fire districts, and county service districts for fire protection. The Hartsease and Harrison fire districts are both tax-supported fire districts and are governed by the provisions of Article 3A of Chapter 69 of the General Statutes.

G.S. 69-25.11 sets out the only means to alter established boundaries. They are:

1. The area in a district may be **increased** by adding adjoining territory upon the application of the owner, or a 2/3 majority of the owners of the territory to be included, the unanimous recommendation of the fire protection commissioners, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection, and the approval of the county boards of commissioners in which the district is located.
2. The area of a district may be **decreased** upon the application of the owner of the territory to be removed, the unanimous recommendation in writing of the fire protection commissioners of the district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the boards of county commissioners in which the district is located.
3. In the case of adjoining fire districts having the same rate of tax for fire protection, the board of county commissioners, upon petition of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the affected districts, shall have the authority to **relocate** the boundary lines between the fire districts.
4. In the case of adjoining fire districts having a different rate of tax for fire protection, the board of county commissioners, upon petition of 2/3 of the owners of the territory involved and after receiving a favorable recommendation of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the affected districts, may transfer the territory from one district to another, and therefore **relocate** the boundary lines between the fire districts.

5. The area of a district may be **increased** by adding adjoining territory lying within the corporate limits of the city if the territory is not already included within a district. Both the city governing body and the county commissioners of the county in which the district is located must all agree by resolution to the inclusion.

BILL ANALYSIS: House Bill 1613 changes the boundaries of the Harrison and Hartsease fire tax districts, without having to meet the requirements of G.S. 69-25.11(4) set out above. As a result of this boundary change, some people who are currently taxed and receive fire protection service in the Hartsease district would be taxed and receive fire protection service in the Harrison fire tax district. According to the Harrison Fire Chief, the tax rate in the Harrison fire district is lower than the tax rate in the Hartsease fire district, so the people affected by the boundary change will experience a tax decrease for their fire protection. According to the Hartsease Fire Chief, his district will lose approximately $1,200-$1,300 in revenue for FY 2002-2003 as a result of the boundary change.

BACKGROUND: The Harrison and Hartsease fire districts are adjoining fire districts. Prior to 1995, the Harrison and Hartsease fire districts each provided fire protection for an area covering approximately 5 to 6 miles. Then in 1995, the General Assembly enacted legislation that altered the boundaries by expanding the Hartsease fire district and reducing the Harrison fire district. House Bill 1613 will restore the boundaries to the way they were prior to the 1995 legislation.

Exemptions from or modifications to the statutory requirements for changing fire tax district boundaries have been given to the following counties:

- Orange County (S.L. 1957-302)
- Durham County (S.L. 1967-791)
- Bladen County (S.L. 1985-256)
- Wake County (S.L. 1985-256)
- Henderson County (S.L. 2000-4)
- Haywood County (S.L. 2001-56)

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1578 A BILL TO BE ENTITLED AN ACT TO REMOVE THE SUNSET ON THE SCRAP TIRE DISPOSAL TAX.

X☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1578

Short Title:	Remove Scrap Tire Tax Sunset.	(Public)
Sponsors:	Representative Gibson.	
Referred to:	Finance.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE SCRAP TIRE DISPOSAL TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 9 of Chapter 548 of the 1993 Session Laws, as amended by Chapter 209 of the 1997 Session Laws, reads as rewritten:

"Sec. 9. Section 4 of this act becomes effective January 1, 1994. Section 8 of this act becomes effective June 30, 1997. All other sections of this act become effective October 1,1993. ~~Section 1 of this act expires June 30, 2002.~~ Section 7 of this act expires June 30, 1995. ~~The expiration of the additional tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arise during the time the additional tax is in effect.~~ The first quarterly report required by G.S. 130A-309.63(e), as enacted by this act, is due within 60 days after the quarter that ends on December 31, 1993."

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

HOUSE BILL 1578:
Remove Scrap Tire Disposal Tax Sunset

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Gibson
Date:	June 18, 2002	**Summary by:**	Martha Walston*
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1578 would remove the sunset from the Scrap Tire Disposal tax so that the 2% gross receipts tax would continue indefinitely on tires with a bead diameter of less than 20 inches.***

CURRENT LAW: The scrap tire disposal tax was enacted in 1989 and applies to tires sold at retail and tires sold for placement on vehicles to be sold or leased at retail. In 1993, the tax rate on tires with a bead diameter of less than 20 inches was increased from 1% to 2%. Bead width is the width of the inside opening of the tire. Tires for cars, vans, and pick-up trucks have a bead width of less than 20 inches. The increased tax rate will expire on June 30, 2002. If the tax increase sunsets, the tax on tires with a bead width of less than 20 inches will revert back to 1%.

The scrap tire tax proceeds are distributed as follows: 27% to the Scrap Tire Disposal Account[1], 5% to the Solid Waste Management Trust Fund, and 68% to the counties on a per capita basis. Counties may use the proceeds of the scrap tire disposal tax distributed to them only for the disposal of scrap tires or for the abatement of nuisance tire collection sites. DENR may use up to 50% of the revenue in the Scrap Tire Disposal Account for grants to local governments to assist in the disposal of scrap tires and may use up to 40% of the amount in the Account for grants to encourage the use of processed scrap tire materials. The remaining funds in the Account may be used to clean up nuisance scrap tire collection sites if no other funds are available for that purpose. DENR must report to the Environmental Review Commission each year on the balances in the Account and the use of the money in the Account.

BILL ANALYSIS: House Bill 1578 would repeal the June 30, 2002, sunset; thus making permanent the current 2% tax rate on tires with a bead diameter of less than 20 inches.

The Environmental Review Commission recommended the repeal of the sunset to the 2001 Session, and again this year. Senate Bill 972, introduced last session by Senator Odom, would also repeal the June 30, 2002 sunset. SB 972 received a favorable report last year from the Committee on Agriculture, Environment, and Natural Resources and is currently in Senate Finance.

*Cindy Avrette, staff attorney, contributed substantially to this summary.

[1] Section 2.2(j) of the Current Operations and Capital Improvement Appropriations Act of 2001 provided that the net proceeds of the Scrap Tire Disposal tax collected in 2001-02 would be credited to the General Fund instead of the Scrap Tire Disposal Account.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1578 (1st Edition)

SHORT TITLE: Remove Scrap Tire Tax Sunset.

SPONSOR(S): Rep. Gibson

FISCAL IMPACT

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

($ Millions)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Scrap Tire Disposal Tax	5.35	5.62	5.90	6.20	6.51
EXPENDITURES					
Solid Waste Management Trust Fund	0.27	0.28	0.30	0.31	0.33
Scrap Tire Disposal Acct.	1.45	1.52	1.59	1.67	1.76
County Governments	3.64	3.82	4.01	4.21	4.42

* Of the net tax proceeds, the SWMTF receives 5%, the Scrap Tire Disposal Account receives 27% and the counties receive 68%.

POSITIONS: **See Expenditures under Assumptions and Methodology**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Department of Revenue, County Governments.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill amends the scrap tire management laws of the state. The bill removes the June 30, 2002, expiration date for the sales tax imposed on new tires sold in North Carolina.

ASSUMPTIONS AND METHODOLOGY: Under existing law, the scrap tire disposal tax is based on the bead diameter of the new tire sold or purchased. The tax is 2% of the sales price for a tire with a bead diameter of less than 20 inches and 1% for a tire with a bead diameter of at least 20 inches. Under current law, the tax reverts to 1% on all tires as of June 30, 2002. The bill removes the sunset on the current tax structure, thus keeping the 2% and 1% rates.

Since the 2% tax rate for smaller tires would have been reduced to 1% on June 30, 2002, passage of this bill will increase tax revenue beginning in FY 2002-03. In FY 1999-00, the 2% tax generated $9.1 million or 87% of the $10.5 million total revenue collected. Since 1996, tax revenue has grown approximately 5% a year. The chart below uses a 5% annual growth rate and divides the revenue between the 2% (87%) and 1% (13%) tax rates. The first column on the chart below shows the total amount of revenue generated. The amount in the far right column of the chart below shows the additional revenue generated by removing the sunset (i.e., keeping the 2% tax instead of reducing it to 1%).

	Projected Revenue	Less Than 20 inches 2%	At Least 20 inches 1%	Less Than 20 inches 1%
FY 02-03	$12,303,706	$10,704,224	$1,599,482	$5,352,112
FY 03-04	12,918,891	11,239,435	1,679,456	5,619,718
FY 04-05	13,564,836	11,801,407	1,763,429	5,900,704
FY 05-06	14,243,078	12,391,478	1,851,600	6,195,739
FY 06-07	14,955,232	13,011,052	1,944,180	6,505,526

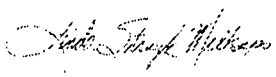
The allocation of the Scrap Tire Disposal Tax is set out in GS 105-187.19. Before distributing any of the tax proceeds, the Department of Revenue is allowed to retain up to $225,000 a year for the administrative expenses related to cost of collection of the taxes. The Secretary of Revenue then distributes the net tax proceeds on a quarterly basis as follows:

1. Five percent to the Solid Waste Management Trust Fund administered by the Department of Environment and Natural Resources (DENR), for waste management grants and technical assistance programs.
2. Twenty-seven percent to the Scrap Tire Disposal Account, administered by DENR, for grants to local governments to assist in disposing of scrap tires, for grants to encourage the use of processed scrap tire materials and for the clean up of nuisance scrap tire collection sites.
3. The remaining 68 percent is distributed among the counties on a per capita basis to fund local tire disposal programs.

Since the 2% tax rate for smaller tires would have been reduced to 1% on June 30, 2002, passage of this bill will increase the revenue beginning in FY 2002-03. This increase in tax proceeds would be allocated and expended according to statute. The chart below shows how much each of the beneficiaries listed above would receive.

Fiscal Year	Solid Waste	Scrap Tire	Counties
2002-03	$267,606	$1,445,070	$3,639,436
2003-04	280,986	1,517,324	3,821,408
2004-05	295,035	1,593,190	4,012,479
2005-06	309,787	1,672,850	4,213,103
2006-07	325,276	1,756,492	4,423,758

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Struyk Millsaps, Richard Bostic Jennifer Hoffman



APPROVED BY: James D. Johnson

DATE: June 13, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1482 A BILL TO BE ENTITLED AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE CITY OF SALUDA.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 1482*

Short Title:	Saluda Deannexation.	(Local)
Sponsors:	Representatives Justus; Clary, Weatherly, Dedmon, and M. Crawford.	
Referred to:	Finance.	

May 29, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE A DESCRIBED AREA FROM THE CORPORATE LIMITS OF THE CITY OF SALUDA.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the City of Saluda are reduced by removing the following described area:

All the following tract that was not already located within the corporate limits of the City of Saluda on December 5, 1988:

BEGINNING on an iron rod which is the terminus of the fifth call from the beginning as shown in the description of the deed from Robert L. Alexander and Wife, Elizabeth M. Alexander, to Theodore V. Zachman and Wife, Thelma R. Zachman, dated October 15, 1974 and recorded in Book 161, Page 1108 of the Polk County Registry; and running thence from said beginning iron rod and with the Zachman line South 16 degrees 07 minutes 45 seconds West, crossing an iron rod in line at 103.01 feet, a total distance of 212.05 feet to an iron rod located in the Northeastern margin of Divide Street; thence running with the Northeastern margin of Divide Street two calls as follows: South 29 degrees 32 minutes 20 seconds East 100.21 feet to an iron pin; and South 71 degrees 43 minutes 05 seconds East 55.68 feet to an iron pin; thence running with the Northeastern margin of Divide Street, North 78 degrees 45 minutes 30 seconds West 74.77 feet to an iron pin at or near the center of said Divide Street; thence with or near the center of said Divide Street North 28 degrees 35 minutes 35 seconds West 159.28 feet to an iron rod in the center of said street; thence continuing with or near the center of Divide Street six calls as follows: North 27 degrees 47 minutes West 156.54 feet to an iron rod; North 29 degrees 57 minutes 40 seconds West 121.92 feet to an iron pin; North 29 degrees 58 minutes 30 seconds West 167.01 feet to an iron pin; North 53 degrees 22 minutes West 55.11 feet to an iron pin; North 30 degrees 56 minutes 20 seconds West 39.86 feet to an iron pin; and North 55 degrees 03 minutes 15 seconds West 127.38 feet to an iron rod; thence leaving Divide Street and running with the Frank A. Ewbank line three calls as follows: North 34 degrees 35 minutes 15 seconds

East 63.63 feet to an iron rod; North 7 degrees 02 minutes 15 seconds East 565.41 feet to an iron pin; and North 40 degrees 11 minutes 50 seconds East 523.44 feet to an iron rod; thence with the line of Duke Power Company South 89 degrees 44 minutes 10 seconds East 912.75 feet to an iron pin; thence with the Baumberger line South 54 degrees 22 minutes 15 seconds East 652.00 feet to an iron pin at a Maple tree; and South 69 degrees 40 minutes 30 seconds East 123.12 feet to an iron rod; thence with the line of Laurel Mountain Subdivision (Section II) six calls as follows: South 50 degrees 03 minutes West 216.07 feet to an iron rod; South 23 degrees 03 minutes 10 seconds East 21.23 feet to an iron rod; South 56 degrees 02 minutes 50 seconds West 135.05 feet to an iron rod; North 89 degrees 07 minutes 50 seconds West 243.39 feet to an iron rod; South 58 degrees 21 minutes 45 seconds West, crossing an iron rod in line at 125.00 feet, a total distance of 342.06 feet to an iron rod; and South 12 degrees 21 minutes 45 seconds West 434.10 feet to an iron pin in the Zachman line; thence with the Zachman line four calls as follows: South 68 degrees 10 minutes 15 seconds West 272.23 feet to an iron rod; North 46 degrees 49 minutes 45 seconds West 181.64 feet to an iron pin; South 63 degrees 10 minutes 15 seconds West 194.44 feet to an iron rod and South 40 degrees 02 minutes 40 seconds West 82.67 feet to the point and place of the BEGINNING, containing 40.34 acres, more or less.

SECTION 2. This act becomes effective June 30, 2002.

HOUSE BILL 1482:
Saluda Deannexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Justus
Date:	June 17, 2002	**Analysis by:**	Martha Walston Committee Counsel
Version:	1st Edition		

SUMMARY: House Bill 1482 is a local bill that removes a described area, containing 40.34 acres from the corporate limits of Saluda in Polk County. The bill becomes effective June 30, 2002. Senate Bill 1119, introduced by Senator Carpenter, is the companion bill.

BILL ANALYSIS

The described property was annexed by ordinance on December 5, 1988. Preliminary engineering revealed that the City of Saluda could not afford to fund the extension of city water and sewer service to the tract. On May 7, 2001, the Board of Commissioners voted to support the owners' request that the tract be de-annexed from the City. All owners of the tract have certified in writing that they desire that the tract be de-annexed.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1587 A BILL TO BE ENTITLED AN ACT TO ANNEX DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1587

Short Title:	Farmville Annexation.	(Local)
Sponsors:	Representative Warren.	
Referred to:	Finance.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO ANNEX DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

The General Assembly of North Carolina enacts:

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

BEING a parcel of land in Farmville Township, Pitt County, North Carolina and being bounded on the north by JBL Investors, on the east by Pitt-Greene EMC, on the south and west by Charter Oaks Section 2 and being more particularly described as follows:

Commencing at a concrete monument, North Carolina Geodetic Survey Station "City Limit" (x=2,417,289.209 feet y = 680,459.294 feet, North Carolina Coordinate System, North American Datum of 1927) and running thence S 21-56-54 E 1199.58 feet to an existing concrete monument in the north line of Carolina Power and Light Company and in the existing Town of Farmville Corporate Limit line; the point of beginning; thence from said beginning point along the existing Town of Farmville Corporate Limit line S 17-26-45 E 13.07 feet to an existing iron pipe in the existing Town of Farmville Corporate Limit line; thence along the existing Town of Farmville Corporate Limit line S 12-36-32 W 249.79 feet to an existing iron pipe in the existing Town of Farmville Corporate Limit line; thence along the existing Town of Farmville Corporate Limit line S 77-23-01 E 28.23 feet to a point; thence along the existing Town Farmville Corporate limit line S 12-39-16 W 130.59 feet to an existing iron pipe, the northeastern corner of Charter Oaks Section 2 subdivision; thence along the Town of Farmville Corporate Limit line and along the northern line of Charter Oaks Section 2 subdivision N 77-28-44 W 330.47 feet to an iron pipe in the existing Town of Farmville Corporate Limit line and Charter Oaks Section 2 subdivision; thence continuing along the existing Town of Farmville Corporate Limit line and Charter Oaks Section 2 subdivision line N 12-38-42 E 266.44 feet to an existing iron pipe; thence leaving the existing Town of Farmville Corporate Limit line with the western line of Carolina

Power & Light Company and the JBL Investors tract N 12-38-42 E 125.26 feet to an existing concrete monument at the northwestern corner of Carolina Power & Light Company tract; thence along the northern line of Carolina Power & Light Company and JBL Investors S 77-29-21 E 295.55 feet to the point of beginning, containing 2.80 acres according to a map by McDavid Associates, Inc. entitled "Annexation Plat for Town of Farmville being the CP&L Substation Tract Deed Book K-26 page 57" dated January 19, 2002.

SECTION 2. This act becomes effective June 30, 2002.

HOUSE BILL 1587:
Farmville Annexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Warren
Date:	June 19, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1587 is a local bill that annexes certain property containing a Carolina Power and Light substation to the corporate limits of the Town of Farmville without the town having to meet the statutory requirements for annexation. The act becomes effective June 30, 2002.***

CURRENT LAW: Annexation is one method that a town may employ to extend its corporate limits, and the process must be done in accordance with Article 4A of Chapter 160A. Annexation may be either voluntary or involuntary. A voluntary annexation requires that the governing board of a municipality pass an ordinance upon presentation of a petition signed by the owners of all real property within the area to be annexed. An involuntary annexation requires, among other things, that the property meet certain characteristics:

- The area proposed to be annexed must be adjacent or contiguous to the municipality's boundaries;
- At least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary; and
- No part of the area may be included within the boundary of another incorporated municipality.

In addition to the requirements concerning location of the area in relation to the municipality's existing boundaries, the area must also be "developed for urban purposes" by meeting one of several standards concerning population, density, and development.

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: House Bill 1587 would annex a one-half acre tract of land containing a Carolina Power and Light substation to the corporate limits of the Town of Farmville without the town having to meet the statutory requirements for annexation. This tract of land does not qualify for involuntary annexation because the area to be annexed would not meet the statutory requirement that it be developed for urban development.

BACKGROUND: Farmville has recently completed three voluntary annexations of land surrounding the CP&L substation, and the city is in the process of completing a fourth annexation. Once the fourth annexation is complete, the property containing the CP&L substation will be completely surrounded by city property. Farmville is seeking to close this "hole" by annexing this tract of land as well.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1626 A BILL TO BE ENTITLED AN ACT TO MODIFY THE BUSINESS OPERATIONS OF THE HOSIERY TECHNOLOGY CENTER AT CATAWBA VALLEY COMMUNITY COLLEGE.

X☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1626

Short Title:	Catawba Comm. Coll/Hosiery Tech. Center.	(Public)
Sponsors:	Representative Buchanan.	
Referred to:	Rules, Calendar, and Operations of the House.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE BUSINESS OPERATIONS OF THE HOSIERY TECHNOLOGY CENTER AT CATAWBA VALLEY COMMUNITY COLLEGE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding any other provision of law, the Hosiery Technology Center of Catawba Valley Community College may invoice and collect fees for the testing of hosiery products. The proceeds of these fees shall be retained by the Center and used for the operations of the Center.

Purchases made by the Center using these funds are not subject to the provisions of Article 3 of Chapter 143 of the General Statutes.

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

HOUSE BILL 1626:
Catawba Comm. College/Hosiery Tech. Center

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Buchanan
Date:	June 17, 2002	**Analysis by:**	Martha Walston, Committee Counsel, and Kristine Leggett, fiscal analyst
Version:	1st Edition		

SUMMARY: **House Bill 1626 authorizes the Hosiery Technology Center of Catawba Community College to invoice and collect fees for the testing of hosiery products. The proceeds must be retained by the Center and used for the Center's operations. Purchases made by the Center using these funds are not subject to the State purchasing requirements and procedures set out in Article 3 of Chapter 143 of the General Statutes.**

BACKGROUND: The Hosiery Technology Center at Catawba Valley Community College provides technical services to the hosiery manufacturers in North Carolina. These services include product testing, research and development, and training. Since January, the Center has collected fees for product testing. The fees cover the actual cost of testing, including staff hours, materials, and equipment. Currently the receipts collected by the Center go into the Catawba Valley's Institutional Fund account. HB 1626 would allow the Hosiery Center to retain receipts collected for product testing services and use them for operating expenses.

As part of the Community College budget, the Hosiery Technology Center receives an annual appropriation of $125,000 from the General Fund. For fiscal year 2001-2002, an additional $250,000 was allotted to the Center from the Employment Security Commission Training and Employment Account. No funds from this Account will be available for next year.

HB 1626 has no effect on General Fund revenues, and may offset the de facto reduction to the Center's operating funds resulting from the loss of the ESC funds.

MINUTES
HOUSE COMMITTEE ON FINANCE

June 26, 2002

The House Committee on Finance met on Wednesday, June 26, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Martha Alexander, Philip Baddour, John Blust, Russell Capps, Leslie Cox, Pete Cunningham, Michael Decker, Andrew Dedmon, Zeno Edwards, Pryor Gibson, Joe Hackney, Hugh Holliman, Bill Hurley, Daniel McComas, Eugene McCombs, Edwin McMahan, Mia Morris, Art Pope, John Rayfield, Edgar Starnes, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble. Staff members present were Martha Walston, Richard Bostic, and Canaan Huie. A Visitor Registration Sheet is attached and made a part of these minutes.

House Bill 1662, ROANOKE RAPIDS ANNEXATION, was before the committee for consideration.

Representative Jim Crawford, sponsor, explained the bill.

Representative Monroe Buchanan moved for the adoption of a committee substitute.

Representative Bill Hurley moved for a favorable report. Committee substitute passed with a favorable report, unfavorable as to original bill.

House Bill 1747, CHIROPRACTIC TECHNICIANS FEE, was explained by sponsor, Representative Phil Baddour.

An amendment to change the effective date was sent forth by Representative Gordon Allen who moved for adoption of the amendment. A vote was taken and the amendment was passed.

Vance Kinlaw, Attorney for the State Board of Chiropractic Examiners, spoke on and answered questions posed by Representative Jarrell regarding the venue for coursework and from Representative Decker about certification.

Representative Mary Jarrell moved that the amendment be rolled into a committee substitute and be given a favorable report. Committee substitute passed with a favorable vote, unfavorable as to original bill.

Before proceeding, Chairman Luebke introduced the pages and Sergeants-at-Arms. Pages were Kristen Lovin, Cabarrus County; Blair Stowe, Beaufort County; David Clark, Rockingham County, and Derek Scott, Wake County. Sergeants-at-Arms were Dusty Rhodes, Bob Samuels, Walter Spell, and Bill Freeman.

House Bill 1520, EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT, after having been heard at meetings on June 12th and June 13th, was again before the committee for consideration.

Representative Monroe Buchanan moved for the adoption of a committee substitute.

Representative Gordon Allen, sponsor, in explaining the bill, also reported that the bill had been heard at earlier meetings, but had been postponed.

Canaan Huie, Staff Attorney, explained the committee substitute.

Kent Christison, partner with Kennedy, Covington and acting general counsel with MCNC, answered questions posed by Representative Art Pope.

Representative Allen advised that TDA (Technological Development Authority) has been removed from the bill.

Representative Starnes questioned staff on the subject of potential constitutional problems and Canaan Huie confirmed that it satisfies that issue.

Representative Decker asked Martha Walston for a report of the number of grants from the six organizations from the past three years. A handout was submitted providing names of entities that have been asked to provide the amount of grants they have given in the preceding three years and to whom. Richard Bostic, Fiscal Research, explained that, with respect to MCNC, there were no grantees eligible in the last three years.

Representative Buchanan moved to give the committee substitute a favorable report. The committee substitute was given a favorable vote, unfavorable as to the original bill.

House Bill 1609, DURHAM CITY INVESTMENTS, was before the committee for consideration.

Representative Martha Alexander sent forth a committee substitute and moved for adoption of the committee substitute.

Representative Paul Miller, bill sponsor, explained the bill.

Navdeep S. Gill, Finance Director for the City of Durham, spoke on the bill and supplied answers to questions from Representative Holliman about who would decide where the monies are invested; from Representative Weiss concerning commissions from churning of funds, and from Representative McComas regarding fund fees.

Representative William Wainwright moved that the committee substitute be given a favorable report. It was voted on and given a favorable vote, unfavorable as to original bill.

There being no further business, the Chair adjourned the meeting at 9:40 A.M. to reconvene Wednesday, July 3, 2002.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

Attachments:
Agenda
Visitor Registration Sheet

Committee Report for HB 1662
Proposed Committee Substitute for HB 1662
HB 1662
Bill Analysis

Committee Report for HB 1747
Proposed Committee Substitute for HB 1747
Amendment to HB 1747
HB 1747
Bill Analysis
Fiscal Note

Committee Report for HB 1520
Proposed Committee Substitute for HB 1520
HB 1520
Bill Analysis
Fiscal Note (Second Edition)
Fiscal Analysis Memorandum
Handout

Committee Report for HB 1609
Proposed Committee Substitute for HB 1609
HB 1609
Bill Analysis

AGENDA

House Finance Committee

June 26, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1520 EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT
Rep. Gordon Allen

HB 1609 DURHAM CITY INVESTMENTS
Rep. Paul Miller

HB 1662 ROANOKE RAPIDS ANNEXATION
Rep. Jim Crawford

HB 1747 CHIROPRACTIC TECHNICIANS FEE
Rep. Phil Baddour

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE — Wednesday, June 26, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCEITA
JIM MYERS	NCEITA
JOHN MYERS	NCEITA
Kent Christison	Kennedy Covington, MCNC
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN
Sam Taylor	NCBIO
	"
	NC State Watch
Carole Lawler	EGHS
Michelle Frazier	NC Bar Ass'n
Shayna Waites	intern

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE — Wednesday, June 26, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	OSBM
Bill Spencer	NCDOR
Eddie Erich	NCDOR
Andrea Schrag	Rep. Alexander
Mary Katherine Hackney	Rep. Hackney
Kenneth C. Pennarr	City of Durham
Angie Harris	MTE
John Blust	Studs are us

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE.**

☐ Committee Substitute for
H.B. 1520 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1520
PROPOSED COMMITTEE SUBSTITUTE H1520-CSLYx-33 [v.5]

6/25/2002 3:43:46 PM

Short Title: Extend Qualified Business Venture Tax Credit. (Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO AMEND THE DEFINITION OF QUALIFIED GRANTEE BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of

the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. G.S. 105-163.010(9) reads as rewritten:

"**§ 105-163.010. Definitions.**

The following definitions apply in this Part:

...

(9) Qualified grantee business. – A business that (i) ~~has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii)~~ is registered with the Secretary of State under G.S. ~~105-163.013.~~105-163.013, and (ii) has received during the preceding three years a grant or other funding from a federal agency under the Small Business Innovation Research Program administered by the United States Small Business Administration or from an organization that meets any of the following qualifications:

a. It is a domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the biotechnology industry, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years..

b. It is a domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the microelectronics and communication industries, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.

c. It is an institute that (i) is administratively located within a constituent institution of The University of North Carolina, (ii) is financed in part by a domestic or foreign corporation that is tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has as a principal purpose the stimulation of economic development

based on the advancement of science, engineering, and technology, and (iv) funds, either directly or in collaboration with other entities, small businesses engaging in developing technology."

SECTION 4. G.S. 105-163.013(c) reads as rewritten:

"(c) Qualified Grantee Businesses. - In order to qualify as a qualified grantee business under this Part, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. ~~A business meets the requirements for registration as a qualified grantee business if it has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program.~~The requirements for registration as a qualified grantee business are set out in G.S. 105-163.010(9).

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Part for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection."

SECTION 5. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, 2004."

SECTION 6. Sections 3 and 4 of this act become effective January 1, 2003. Notwithstanding the amendments to G.S. 105-163.010 and G.S. 105-163.013 in Sections 3 and 4 of this act, a business to which a grant or other funding was committed before January 1, 2003, by the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program may still qualify as a qualified grantee business under the provisions of G.S. 105-163.010 and G.S. 105-163.013 as they existed before the enactment of this act. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1520*

Short Title:	Extend Qualified Business Venture Tax Credit.	(Public)
Sponsors:	Representatives Allen, Luebke (Primary Sponsors); Buchanan, Hill, Holliman, Jarrell, McComas, Wainwright, Alexander, Cox, Dedmon, Edwards, Hurley, Morris, and Weiss.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of

the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Article is repealed effective for investments made on or after January 1, 2004."

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

HB 1520
Extend Qualified Business Venture Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Allen
Date:	June 26, 2002	**Analysis by:**	Y. Canaan Huie
Version:	PCS for 1st edition		Staff Attorney

SUMMARY: ***This bill extends the sunset for the tax credit for qualified business investments for one year. Without this bill, that tax credit would expire for investments made on or after January 1, 2003. This bill is effective when it becomes law. The PCS makes a technical change.***

ANALYSIS: The qualified business investment tax credit was enacted in August 1987 to promote economic development for North Carolina businesses. The initial credits applied to both corporations and individuals taxpayers, and there was a $12 million cap on the total amount of all tax credits. In response to a 1996 United States Supreme Court decision in Fulton Corp. v. Faulkner, the General Assembly reduced the $12 million cap to $6 million, limited the credit to individuals and small pass-through entities, and removed the requirement that the qualified businesses be headquartered or operating in North Carolina. The credit was to expire for investments made on or after January 1, 1999. In 1998, as part of the appropriations bill, the credit was extended for four additional years until January 1, 2003. This bill would extend that sunset for one additional year.

The credit is allowed for an individual taxpayer who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business. The credit is equal to 25% of the amount invested and may not exceed $50,000 per individual in a single taxable year. An individual investor may also claim the allocable share of credits obtained by "pass-through entities" of which the investor is an owner. Pass-through entities include limited partnerships, general partnerships, S corporations, and limited liability companies. The credit may not be taken in the year the investment is made. Instead, the credit is taken in the year following the calendar year in which the investment was made, but only if the taxpayer filed an application with the Secretary of State. The unused credit may be carried forward for the next five years. The total amount of credits allowed to all taxpayers for investments made in a calendar year may not exceed $6 million. The Secretary of Revenue calculates the total amount of tax credits claimed from applications filed with the Secretary of State. If the amount exceeds the cap, then the Secretary allows a portion of the tax credits claimed by allocating the total of $6 million in tax credits in proportion to the size of the credit claimed by each taxpayer. In general, a taxpayer forfeits the credit if the taxpayer transfers the securities within one year or the qualified business redeems the securities purchased by the taxpayer within five years after the investment was made.[1]

Under the 1996 Fulton case, the original credit provisions clearly violated the interstate commerce clause of the federal constitution because they reduced a taxpayer's tax liability by an amount equal to 25% of the cost of purchasing stock in either a North Carolina business or an investment company whose purpose is to invest in North Carolina businesses, while no tax reduction was allowed for purchasing similar stock

[1] There are two exceptions to this forfeiture provision. First, if the transfer occurs as a result of the death of the taxpayer, the liquidation of the taxpayer, or certain reorganizations of the qualified business, within the one-year period, the transfer does not require forfeiture. Second, the 1998 legislation created an exception to this forfeiture provision for projects in the film industry. It is unusual for a project in that industry in which a person might invest to last for more than 5 years.

in out-of-state businesses or investment companies whose purpose is to invest in businesses that may not be North Carolina businesses. In response to the Fulton case, the Revenue Laws Study Committee discussed this credit along with several others, at great length. The original proposal of the Committee was to repeal all qualified business investment credits, effective January 1, 1997. In response to appeals to the Committee and to the General Assembly, the credit was expanded to include investments in businesses located both inside and outside North Carolina, but was no longer allowed for investments in investment companies and was limited to investments made by individuals and small pass-through entities under the theory that these investors are not likely to invest outside of a 50-mile radius of their home.

There was a constitutional concern with the provision of the credit regarding "qualified grantee businesses". In order to be a business in which investments are eligible for a credit, the business must be either a "qualified business venture" or a "qualified grantee business". Both types of businesses must be registered with the Secretary of State. The definition of "qualified business venture" includes several general requirements related to the line of business, gross revenues of the business, and the organization date of the business. The definition of "qualified grantee business" currently includes a requirement that the business have received a grant or other funding in at least one of the three previous years from one of several named entities. One could argue that this provision violates the rule of uniformity since a credit is allowed only for investments in business that have received a grant from one of several specifically named organizations, and not for investments in similar businesses that have received grants from similar organizations. To address this issue, this PCS replaces the specific named entities with descriptions that would encompass the North Carolina Biotechnology Center, MCNC, and the Kenan Institute for Engineering, Technology, and Science. These descriptions would not encompass the Technological Development Authority. It is unknown if any other entity would qualify under these descriptions.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1520 (Second Edition)

SHORT TITLE: Extend Qualified Business Venture Tax

SPONSOR(S): Representatives Allen, Luebke, et al.

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund		($6,000,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State

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

BILL SUMMARY: The bill extends the individual income tax credit for Qualified Business investments from January 1, 2003, to January 1, 2004. The definition of Qualified Grantee Business is revised to replace specific named entities with general descriptions of entities that would encompass the North Carolina Biotechnology Center, MCNC, and the Kenan Institute for Engineering, Technology and Science. The new definition does not include the Technological Development Authority.

ASSUMPTIONS AND METHODOLOGY:
The amount of Qualified Business credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in 2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on returns filed in the spring of 2004. Credit demand will not be affected by the exclusion of firms receiving grants from the Technological Development Authority. Most of these firms should qualify for the credit by applying for Qualified Business Venture status with the Secretary of State.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 26, 2002

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: June 7, 2002

TO: House Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: HB 1520 PCS - Extend Qualified Business Venture Tax Credit

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FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund		($6,000,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State

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

BILL SUMMARY: The bill extends the individual income tax credit for Qualified Business investments from January 1, 2003 to January 1, 2004.

ASSUMPTIONS AND METHODOLOGY: The amount of Qualified Business credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in

2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on tax returns filed in the spring of 2004.

SOURCES OF DATA: Department of Revenue

TECHNICAL CONSIDERATIONS:

QUALIFIED GRANTEE BUSINESSES

CURRENTLY REGISTERED WITH SEC. OF STATE

Academy Venture Fund, LLC (FKA Longleaf Venture Fund, LLC)	920 Main Campus Drive	Raleigh	NC
Academy Ventures, LLC (FKA Longleaf Ventures, LLC)	920 Main Campus Drive	Raleigh	NC
AlphaVax, Inc.	710 West Main Street	Durham	NC
Bloodhound Software, Inc.	615 Davis Drive, Suite 600	Durham	NC
Blue292, Inc.	2525 Meridian Parkway	Durham	NC
Carolinas Capital II, LLC	1408 Biltmore Drive	Charlotte	NC
Catalysta Seed Fund I, Limited Partnership	1822 NC 54, Suite 250	Durham	NC
Charlotte Angel Partners, LLC	5615 Laurium Road	Charlotte	NC
Cirque Networks, Inc.	P.O. Box 1443	Indian Trail	NC
Ensolve Biosystems, Inc.	3209 Gresham Lake Road	Raleigh	NC
FV of North Carolina, LLC (fka, Fusion Ventures, LLC)	112 South Duke Street	Durham	NC
Harbinger/Aurora Venture Fund, L.L.C.	2525 Meridian Parkway	Durham	NC
Industrial Microwave Systems, Inc.	3000 Perimeter Park Drive	Morrisville	NC
Intersouth Affiliates V, L.P.	3211 Shannon Road	Durham	NC
Intersouth Partners III, L.P.	3211 Shannon Road	Durham	NC
Intersouth Partners IV, L.P.	3211 Shannon Road	Durham	NC
Intersouth Partners V, L.P.	3211 Shannon Road	Durham	NC
Link Technology, Inc.	P.O. Box 12076	RTP	NC
LipoMed, Inc.	3009 New Bern Avenue	Raleigh	NC
Piedmont Angel Network LLC	701 Green Valley Road, Suite 100	Greensboro	NC
Pilot Therapeutics, Inc.	101 North Chestnut Street	Winston-Salem	NC
Quantum Logic Devices, Inc.	813 Valerie Drive	Raleigh	NC
Quill Medical, Inc.	2505 Meridian Parkway, Suite 150	RTP	NC
Research Triangle Ventures, LP	718 West Lane Street	Raleigh	NC
Sicel Technologies, Inc.	3800 Gateway Centre Blvd., Suite 308	Morrisville	NC

QUALIFIED GRANTEE BUSINESSES

SouthEast Interactive Affiliates Fund III, L.P.	630 Davis Drive	Morrisville	NC
Southern Capitol Technology Fund I, LLC	21 Glenwood Avenue, Suite 107	Raleigh	NC
The Atlantis Group, LLC	2530 Meridian Parkway	Durham	NC
Tri-State Investment Group III, LLC	405 Tramore Drive	Chapel Hill	NC
Tri-State Investment Group IV, LLC	405 Tramore Drive	Chapel Hill	NC

PREVIOUS GRANTEES

4pi Analysis, Inc.	3500 Westgate Drive	Durham	NC
A & J Publishing	6320 Quadrangle Drive	Chapel Hill	NC
AndCare, Inc.	P.O. Box 14566	RTP	NC
Carolinas' Distribution Services Inc.	1238 Anthony Road	Burlington	NC
Cedalion Education, Inc.	Rt 2 Box 197	Blowing Rock	NC
Foothills Hosiery Inc.	932 IDEAL WAY	Charlotte	NC
Harbinger/Aurora QP Venture Fund, L.L.C.	2525 Meridian Parkway	Durham	NC
Innovatech, Inc.	P.O. Box 12744	RTP	NC
Johnston Zabor & Associates Inc.	7225 Wrightsville Ave.	Wrightsville	NC
Paradigm Genetics Inc.	104 Alexander Drive, Bldg. 2	RTP	NC
Park Place Surgery Center, Inc.	2200 W. MAIN ST. STE 900	DURHAM	NC
Pinnacle Corporate Services, Inc.	710 West Main Street	Durham	NC
SciQuest.com, Inc.	5151 McCrimmon Parkway	Morrisville	NC
TrialPages, Inc.	3114 Stanford Drive	Durham	NC
U.S. PROTECTIVE LENS INC.	4222 Emperor Blvd.	Durham	NC
Volumetrics Medical Imaging	700 West Main St.	Durham	NC
Waste Reduction Products Corporation	P.O. Box 387	Kannapolis	NC

Kenan Institute for Engineering, Technology, & Science

Funded Programs - as of June 2002

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
Thurman-Zumwalt	College of Veterinary Medicine	Phil Carter	2001-2002	$7,500
NC Knowledge Nova: Learning at the Speed of Light	NCEITA Education Foundation	Joan Myers	2001-2002	$3,000
Saliba/Bhutto Lectures	College of Humanities and Social Sciences	Robert Kochersberger	2001-2002	$2,200
All Triangle Entrepreneur Games	Duke University, Fuqua School of Business	Nasrin Gaffaney	2001-2002	$500
Graham Allen Lecture	College of Humanities and Social Sciences	James Svara	2001-2002	$600
Zinc Oxide Thin Films and Devices	College of Engineering	Robert Davis	2001-2002	$35,000
Institute for Emerging Issues	Kenan Institute	Noah Pickus	2001-2002	$42,500
Engineering Entrepreneurs Program	College of Engineering	Thomas Miller	2001-2002	$40,000
Statistical and Applied Mathematical Sciences Institute (SAMSI)	Duke University	James Berger	2001-2002	$20,000
Advanced Biomolecular Interactions Resource (ABIR)	College of Agriculture and Life Sciences, PAMS	John Cavanagh	2001-2002	$12,500
Graduate School Informational/Recruitment CD-ROM	Graduate School	Duane Larick	2001-2002	$10,000
National Institute for Aerospace (NIA)	College of Engineering, AT&T	Robert Nagel, William Craft	2001-2002	$5,000
Alliance for Analog/RF Mixed Signal Design	College of Engineering Engineering Foundation	Christine Cerny	2000-2001	$70,000
BLG Ventures Technology Forum Series	BLG Ventures	Julian Barnes	2000-2001	$1,250
Center for Innovation Management Studies (CIMS)	College of Management	Alden Bean	2000-2001	$160,000
CHASS Science/Humanitites International Scholars	College of Humanities and Social Sciences	Robert Kochersberger	2000-2001	$9,000

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
Claude McKinney Plaza	Centennnial Campus Development	Dick Daugherty	2000-2001	$500
Doubletake Documentary Film Series (Full Fame)	Center for Documentary Studies at Duke University	Ann Tharrington	2000-2001	$27,500
eEurope: Building a New European Economy	College of Humanities and Social Sciences	Roland Stephen	2000-2001	$5,000
Emerging Issues Workshop	College of Design	Marvin Malecha	2000-2001	$12,000
Emerging Issues Workshop	College of Education	Kay Moore	2000-2001	$5,000
International Industrial Hemp Forum 2000	Kenan Institute	Gayle Glenn	2000-2001	$40,063
ITRE-Transportation Founder's Fund	ITRE	Larry Goode	2000-2001	$10,000
Kenan Fellows for Curriculum and Leadership Development	College of Management, College of Education, College of Physical and Mathematical Sciences, DELTA, UNC-Chapel Hill, Duke	Deborah Mangum	2000-2001	$100,000
Kenan-Gordon Conferences	Kenan Gordon	Gerri Miceli	2000-2001	$46,000
Nanostructured Polymer Matrices	College of Engineering	Richard Spontak	2000-2001	$9,000
Nanotechnology for DNA Detection	College of Physical and Mathematical Sciences	Stefan Franzen	2000-2001	$42,000
Neos Discovery Drug Targets for Infectious Disease	College of Agriculture and Life Sciences	Paul Agris	2000-2001	$20,000
North Carolina Progress Board	Kenan Institute	Tom Covington	2000-2001	$9,000
North Carolina Space Institute	College of Agriculture and Life Sciences	Chris Brown	2000-2001	$50,000
NSCORT-Programmable Plants Workshop	College of Agriculture and Life Sciences	Chris Brown	2000-2001	$6,000
Wake Education Annual Meeting and Small School-A Town Meeting	Wake Education	Deborah Mangum	2000-2001	$1,500

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
A Workshop on Industry/University Collaboration in Computer Vision	College of Engineering	Wesley Snyder	1999-2000	$5,000
CO2 Patent Assessment, Acquisition & Transfer Initiative	NC State University UNC-Chapel Hill	Ruben Carbonell Joe DeSimone	1999-2000	$107,200
Design-based Education K-12	College of Design	Meredith Davis	1999-2000	$32,500
Emerging Issues Forum	Office of the Governor	Betty Owen	1999-2000	$44,528
Greater Triangle Regional Council: Clusters of Innovation	The Greater Triangle Regional Council	Pam Wall	1999-2000	$25,000
InfoTech '99	Council for Entrepreneurial Development	Michael Zapata	1999-2000	$1,000
Literacy Junction: Teachers Onboard/Online	College of Education	Hiller Spires	1999-2000	$75,000
North Carolina and Japan: Trade and Investment Conference	College of Management, NC Japan Center	Edward Erickson Francis Moyer	1999-2000	$2,000
Pattillo School	College of Engineering Kenan Institute for the Arts	Timothy Pittman	1999-2000	$26,314
Science Olympiad	Science Olympiad	Phil Dail	1999-2000	$18,000
SE Raleigh High School First Competition	SE Raleigh High School	C. Derek Miller	1999-2000	$5,000
Southern Technology Council: Invented Here	Southern Technology Council	Jim Clinton	1999-2000	$150,000
1999 Ravello Conference: "Catalysis in Membrane Reactors: New Frontiers for Catalytic Membrance Reactors and Other Membrane Systems"	University of Calabria (Italy)	Enrico Drioli, Harold Hopfenberg	1998-1999	$30,000
Center for Information Technology and Policy (CITAP)	College of Humanities and Social Sciences	Robert Entman	1998-1999	$65,000
Challenger Learning Center	Centennial Campus Development College of Engineering	Robert Geolas Fred DeJarnette	1998-1999	$29,000
FORESEE	College of Education College of Engineering	Cathy Crossland Larry Monteith	1998-1999	$82,324

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
Fourth Regional Science & Technology Policy Research Symposium	Kenan Institute of Private Enterprise	Michael Luger	1998-1999	$10,000
IDIOM:The Education Future Center:North Carolina School of Science and Mathematics	College of Engineering NC School of Science & Math	Robert St. Amant	1998-1999	$70,000
NC State Leadership, Service and Ethics Center	Multidisciplinary Studies Student Affairs	Patti Clayton Gerald Hawkins	1998-1999	$40,000
Seeing the Future: A Community Economic Education Project for the South	Southern Technology Council Southern Growth Policies Board	Louis Tornatzky	1998-1999	$25,000
World Trade Center-NC (Export 99)	Kenan Institute of Private Enterprise, World Trade Center	Jennifer Bremer	1998-1999	$15,000
Centennial Venture Partners	Centennial Venture Partners	Dick Daugherty	1997-1998	$50,000
Embrex-Viral Neutralizing Factor Technology Consortium	College of Veterinary Medicine Embrex	Talmage Brown Craig Whitfill	1997-1998	$7,500
Kenan Center for the Utilization of CO2 in Manufacturing	NC State University UNC-Chapel Hill	Ruben Carbonell Joseph DeSimone	1997-1998	$350,000
NC-ACTs-Information Sciences and Technologies Matching Assistance Program (ISTMAP-6 projects)	NC State University, Duke University	Duel-Hallen, Baran, Nemanich, Bibro, Fair, Trivedi	1997-1998	$60,000
PhysViz: The Education Future Center:North Carolina School of Science and Mathematics	College of Engineering School of Design NC School of Science & Math	James Lester Pat Fitzgerald	1997-1998	$70,000
SATELLITE (student career exploration in science)	Student Affairs	Gerald Hawkins	1997-1998	$14,000
Technology Enterprise Actvities (CTEC)	College of Engineering College of Management	Michael Zapata	1997-1998	$121,732
Worldesign Conference on Design-Enriched Learning	School of Design, Kenan Institute of Private Enterprise, Kenan Institute for the Arts	Meredith Davis	1997-1998	$25,000
Kenan-NC Biotechnology Center Collaborative Funding Assistance Program	NC State, Duke, UNC-Chapel Hill, Wake Forest, Carolinas Medical Center, East Carolina	Ken Tindall	1995-1996	$774,052

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
Network Architecture for the Information Highway	Kenan Institute of Private Enterprise	Barbara McMurray	1995-1996	$6,360
North Carolina School of the Arts-MCNC Technology for the Film Industry	School of Arts, Kenan Institute of Private Enterprise, Kenan Institute for the Arts	Sam Grogg William Pfeiffer	1995-1996	$24,333
Science That Means Business National Teleconference	NC Biotechnology Center University of Maryland	Thomas Laundon Stuart Sedlack	1995-1996	$5,000
Supercritical Fluid Technology in Textile Processing	College of Textiles	Dave Buchanan	1995-1996	$100,000
Advanced Semiconductor Materials (Blue Light Diodes and Lasers)	College of Engineering	Robert Davis	1994-1995	$210,000
Hoechst-Celanese-Kenan Program in Environmental Science & Technology	College of Engineering, College of Textiles, School of Design, College of Veterinary Medicine, PAMS, Forest Resources	Ruben Carbonell	1994-1995	$113,780
Kenan-APEC Research and Education Partnership	College of Agriculture and Life Sciences	Steven Schwartz Frank Smith	1994-1995	$120,000
Kenan-Italo Consortium for the Preservation of Monumental Works of Art	College of Engineering University of Florence, Italy	Ruben Carbonell Franco Piacenti	1994-1995	$415,302
Making Technology Happen in Schools: Best Strategies, Tactics, and Practices	Southern Technology Council	Louis Tornatzky	1994-1995	$60,000
MicroElectroMechanical Systems (MEMS) Regional Alliance	College of Physical and Mathematical Sciences	Rodney McCormick Dale Sayers	1994-1995	$30,000
NCSU-Kenan Natural Hazards Mapping Program	College of Engineering	John Fisher Margery Overton	1994-1995	$140,000
Technology: Education & Commercialization (TEC)	College of Management	Michael Zapata, Roger Debo, Stephen Markham, Angus Kingon	1994-1995	$160,000
The International Kenan Conference on BioIron	College of Physical and Mathematical Sciences	Elizabeth Theil	1994-1995	$15,000

Program Title	College / Partner	Principal Investigator(s)	Start Date	Funding
Erika S. Fairchild Research Symposium on Gender, Culture, and Science	College of Humanities and Social Sciences	Michael Reynolds	1993-1994	$2,500
Targeted Chemotherapy for Treatment of Inoperable Brain Tumors	College of Engineering, UNC-Chapel Hill	Ruben Carbonell Keith Quattrocchi	1993-1994	$50,000
Total Kenan Institute Funded Programs				**$4,585,038**

Note: all incubators are non-profits

Companies Funded by TDA (North Carolina TDA, Inc
(loans and equity investments)

FY 1998-1999

(April 1, 1998 – March 31, 1999)

N/D = no disbursement

1998	Project	Approved Amount	Disbursements
May 8	Henderson -Gateway Center Incubator	$25,000	$25,000
June 19	Columbia Incubator, Tyrrell County	$117,650	$105,000
June 19	Plymouth Incubator, Washington County	$100,000	N/D
June 19	Industrial Microwave Systems	$125,000	$125,000
September 17	Persimmon IT (Yellowbrick & etrials)	$250,000	$250,000
September 17	Sanguinex, LLC	$150,000	$150,000
September 17	Mediappraise Corporation	$150,000	N/D
September 17	TriState Investment Group III	$25,000	$25,000
October 26	VideoGate Technologies (Convey Systems)	$250,000	$250,000
December 18	Xanthon, Inc.	$150,000	$150,000
December 18	Pilot Biotechnologies, Inc.	$150,000	$150,000
December 18	Fusion Ventures, LLC	$25,000	$25,000
1999			
March 19	Grant - Hertford Incubator, Perquimans County	$63,000	$63,000
March 19	RLP Loan, Andrews Incubator, Cherokee County	$150,000	$150,000
March 19	TDA Loan, Andrews Incubator, Cherokee County	$125,000	$125,000
March 19	Grant, Town of Andrews Incubator, Cherokee County	$25,000	$25,000
March 19	RLP Loan – Russell Manufacturing & Sales, Inc.	$225,000	$225,000
March 19	Industrial Microwave Systems, LLC	$75,000	$75,000

Companies Funded by TDA

(loans and equity investments)

FY 1999-2000

(April 1, 1999 – September 30, 2000)

18 Month Period

1999	Project	Approved Amount	Disbursements
Jun 18	Incubator – Fayetteville/Cumberland County	$200,000	$200,000
Jun 18	Vining Technology, Inc.	$20,000	$19,418
Jun 18	Zymotech Technology, Inc.	$16,000	$15,000
Jun 18	Harbinger-Aurora Fund	$25,000	$28,570
Sept 24	Incubator – Elizabeth City/River City CDC	$50, 000	$25,000
Sept 24	Incubator – Energy XChange/Spruce Pine	$200,000	$125,000
Sept 24	Incubator (Existing) - Gateway CDC	$54,000	$54,000
Sept 24	Incubator/Wilmington-New Hanover County	$15,000	$15,000
Sept 24	Bloodhound Software, Inc.	$150,000	$150,000
Sept 24	SBTDC (Incubator/Entrepreneurial Dev)	$75,000	$75,000
Sept 24	UNC-Charlotte Fellows Program Grant	$25,000	$25,000
Sept 24	Longleaf Venture Fund, LLC	$100,000	$22,000
Nov	Mi-Co Corporation	$25,000	$25,000
Dec 17	Environmental Connections, Inc. (Blue292)	$250,000	$250,000
Dec 17	Advanced Digital Systems, Inc.	$250,000	$150,000
Dec 17	Unitive Electronics, Inc.	$45,000	$45,000
2000			
Mar 17	Incubator – Kinston/Lenoir County	$200,000	N/D
Mar 17	Incubator – Wilmington/New Hanover Co.	$125,000	$125,000
Mar 17	Xanthon, Inc.	$500,000	$399,999
Mar 17	Bloodhound Software, Inc.	$100,000	$100,000
Mar 17	Charlotte Angel Partners, LLC	$50,000	$48,000
Jun 24	Alphabet Soup, Inc.	$135,000	$135,000
Jun 24	Eure Seed Farms, Inc.	$150,000	$150,000
Jun 24	Maple View Farm Ice Cream Company LLC	$150,000	$152,000
Jun 24	Rural Loan - H&H Products, Inc.	$150,000	$150,000
Jun 24	Industrial Microwave Systems, Inc	$250,000	$269,256
Jun 24	TriState Investment Group IV	$25,000	$25,000
Jun 24	Atlantis Group, LLC	$25,000	$25,000
Jun 24	Bloodhound Software, Inc.	$100,000	$100,000
Jun 24	Blue 292	$250,000	$250,000
Sep 15	OpenMind Publishing Group, Inc.	$250,000	$250,000
Sep 15	Asheville-Buncome Co. Incubator Project	$500,000	N/D
Sep 15	Boone Incubator Project	$100,000	N/D
Sep 15	Hertford-Perquimans Co. Incubator	$75,000	$75,000
Sep 15	Kinston-Lenoir Co. Incubator Project	$30,000	N/D

Companies Funded by TDA FY 2000-2001

(these are not grants but loans and equity investments)

October 1, 2000 – September 2001

2000	Project	Amount	Disbursements
Dec 21	Gillam-Ivey Woodworkcrafts, Inc.	$150,000	$150,000
2001			
Jun 15	Overture Networks, Inc.	$250,000	$250,000
	AdMEtech, Inc.	$7,500	$7,500
	Sequoiah, Inc.	$25,000	$25,000
	Quantum Logic Devices	$25,000	$25,000

Note: Financial assistance provided for economic development are loans, not grants.

North Carolina Biotechnology Center

* The Center makes grants only to University researchers.

Loans to Companies, FYs 1999, 2000, and 2001

Wednesday, June 12, 2002

Organization Legal Name	Organization Address	Project Title	Grant Amount
AgraSol, Inc.	1025 Charter Place Charlotte, NC 28211	Ophiostoma Application Development	$138,440.00
Artacel Sciences, Inc.	801 Capitola Drive, Suite 8 Durham, NC 27713	Chondrogenic Potential of Adipose-Derived Stromal Cells	$150,000.00
Biolex, Inc.	480 Hillsboro Street, Suite 100 Pittsboro, NC 27312	Demonstration of Alpha-Interferon Expression in Lemna	$100,000.00
BioResource International	840 Main Campus Drive Suite 3560 Raleig, NC 27606	Commercial Development of Keratinase Technology	$10,000.00
Columbia Life Systems, Inc.	1501 Basewood Drive Raleigh, NC 27609	Computer Controlled Oxygen Blender	$9,700.00
Columbia Life Systems, Inc.	1501 Basewood Drive Raleigh, NC 27609	Computer Controlled Oxygen Blender	$50,000.00
Diagen Corporation	2329 Hayloft Circle Post Office Box 4023 Charlotte, NC 28226	Preparation of Business Development Plan & Implementation of Strategic Corporate Alliances	$9,000.00
EnSolve Biosystems, Inc.	3209 Gresham Lake Road Suite 147 Raleigh, NC 27615	Development of High Efficiency Biotreatment System	$100,000.00
EnSolve Biosystems, Inc.	3209 Gresham Lake Road Suite 147 Raleigh, NC 27615	Testing and Certification of Pollution Prevention Equipment	$10,000.00
Hybrizyme Corporation	2801 Blue Ridge Road Suite 6-60 Raleigh, NC 27607	An Assay Platform for Detecting Endocrine Disrupters	$100,000.00
Insect Biotechnology, Inc.	100 Capitola Drive, Suite 307 Durham, NC 27713	Studies on TMOF: Toxicology, Insect Specificity and Analog Testing	$100,000.00
LeukoMed, Inc.	P.O. Box 14381 Research Triangle Park, NC 27709	LeukoMed Business Development	$7,946.39
LipoMed, Inc.	3009 New Bern Avenue Raleigh, NC 27610	Detection of Insulin Resistance Syndrome & Diabetes Using NMR Spectroscopy	$94,333.10
Merix Bioscience, Inc.	P.O. Box 14509 Research Triangle Park, NC 27709	Dendritix, Inc. Business Plan	$10,000.00
Neos Discovery, Inc.	100 Oak Mist Drive Cary, NC 27513	Startup Phase Business Development	$10,000.00

Organization Legal Name	Organization Address	Project Title	Grant Amount
Paradigm Organics, Inc.	503 Misty Groves Circle Morrisville, NC 27560	Marketing Development	$6,782.72
PhytoMyco Research Corporation	1800 N. Greene Street Suite 120 Greenville, NC 27835	Discovery of Endothelin Antagonists From Natural Products	$100,000.00
PhytoMyco Research Corporation	1800 N. Greene Street Suite 120 Greenville, NC 27835	The Discovery of Endothelin Receptor Antagonists from Natural Products	$100,000.00
Quill Medical, Inc.	2505 Meridan Parkway Suite 150 Research Triangle Park, NC 27713	In-Vivo Efficacy Studies of the Quill Self-Anchoring Suture	$150,000.00
Sicel Technologies, Inc.	3800 Gateway Centre Blvd. Suite 308 Morrisville, NC 27560	Implantable Sensor for Radiation Therapy	$90,000.00
Stevens Research	2216 Lynnwood Drive Wilmington, NC 28403	Science in the Herbal Marketplace	$10,000.00
Sylvanus, Inc.	P.O. Box 848 45 West St. Pittsboro, NC 27312	Development of a Novel Test Array for the Detection of Polychlorinated Biphenyls	$67,500.00
Synthematix, Inc.	3525 Boren Court Raleigh, NC 27616	Business Development/ Business Plan	$10,000.00
TrialPages, Inc.	3114 Stanford Drive Durham, NC 27707	TrialPages.com Web Site Development	$824.99

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount
42416	HHS	ANALYTICAL SCIENCES, INC. 2605 MERIDIAN PKWY, SUITE 200 Durham NC 27713	$99,938 Phase: 1 Minority: Woman:
		Topic: MATERNALLY LINKED DATA SET WITH ANALYTIC AIDS	
36865	ARMY	ANDCARE, INC. 2810 Meridian Pkwy, Suite 152 Durham NC 27713	$750,000 Phase: 2 Minority: Woman:
		Topic: Gene-Probe Electrodes to Detect Enterically-Transmitted RNA Virus Pathogens	
42352	HHS	ANDCARE, INC. 2810 Maridian Parkway, Suite 152 Durham NC 27713	$100,000 Phase: 1 Minority: Woman:
		Topic: RAPID MOLECULAR DIAGNOSTIC DEVICE FOR SEPSIS	
42519	HHS	AXONAL INFORMATION SOLUTIONS 1133 21ST STREET NW Durham NC 20036	$100,000 Phase: 1 Minority: Woman:
		Topic: TARGETED DISEASE MANAGEMENT IN ASTHMATICS	
39514	HHS	Andcare, Inc. 2810 MERIDIAN PKY, STE 152 Durham NC 27713	$750,000 Phase: 2 Minority: Woman:
		Topic: DNA PROBES FOR DETECTION OF GENE DISORDERS	
39515	HHS	Andcare, Inc. 2810 MERIDIAN PKY, STE 152 Durham NC 27713	$760,191 Phase: 2 Minority: Woman:
		Topic: ELECTROCHEMICAL DETECTION OF ALTERED GENE SEQUENCES	
43360	NSF	Applied Research Assoc 811 Spring Forest Road, Ste 10 Raleigh NC 27609	$99,992 Phase: 1 Minority: Woman: N
		Topic: SBIR Phase I: Risk Consistent Loading Criteria in Regions Influenced by Storm Surge and Hurricane Wi	
42247	HHS	BIOGRAPHICS, INC. 200 W FIRST ST STE 406 Winston-salem NC 27104	$99,975 Phase: 1 Minority: Woman:
		Topic: SYSTEM TO TEST MEDICATIONS DEVELOPED TO TREAT DRUG ABUSE	

Small Business Innovation Research Program

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount
41996	HHS	CERBERUS, INC. PO BOX 2900 Durham NC 27710	$100,000 Phase: 1 Minority: Woman:
		Topic: ANIMAL MODEL OF ALZHEIMERS DISEASE PATHOLOGY	
42555	HHS	CIELO INSTITUTE, INC. 486 SUNSET DR Asheville NC 28804	$99,052 Phase: 1 Minority: Woman:
		Topic: COMPUTATIONAL NEUROPEPTIDE DESIGN AND RECEPTOR MATCHING	
41472	ARMY	CREE RESEARCH, INC. 2810 Meridian Parkway, Suite 176 Durham NC 27713	$99,969 Phase: 1 Minority: Woman:
		Topic: Evaluaation of alternative High-Temperature high-Field Dielectrics for SiC Devices	
41083	AF	CREE RESEARH, INC. 4600 SILICON DRIVE Durham NC 27703	$99,981 Phase: 1 Minority: Woman:
		Topic: DEVELOPMENT OF HIGH TEMPERATURE 4H-SiC POWER ACCUFET	
42125	HHS	Center For Music Therapy Research 1013 GREEN STREET Durham NC 27701	$97,540 Phase: 1 Minority: Woman:
		Topic: FEASIBILITY OF PHYSIOACOUSTIC THERAPY IN CANCER CARE	
42523	HHS	DEMETER BIOTECHNOLOGIES, LTD. 905 WEST MAIN STREET Durham NC 27701	$98,515 Phase: 1 Minority: Woman:
		Topic: ANTIBACTERIAL EFFICACY OF PEPTIDYL MIMS TM	
41047	AF	DIGITAL OPTICS CORP. 5900 Northwoods Business Pkwy Charlotte NC 28269	$98,803 Phase: 1 Minority: Woman:
		Topic: Diffractive Optics for LADAR Scanning	
41425	NAVY	DIGITAL OPTICS CORP. 5900 Northwoods Parkway, Suite J Charlotte NC 28269	$69,027 Phase: 1 Minority: Woman:
		Topic: Self-Assembled Monolayer Based Methods for Fabrication of Diffractive Optical Elements	

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount
39519	HHS	Data Spectrum Corporation 437 DIMMOCKS MILL RD Hillsborough NC 27278	$732,910 Phase: 2 Minority: Woman: W
		Topic: DYNAMIC CARDIAC VENTRICULAR PHANTOM FOR MEDICAL IMAGING	
39913	NASA	Digital Optics Corp 5900 Northwoods Pkwy Suite J Charlotte NC 28269	$600,000 Phase: 2 Minority: Woman:
		Topic: Optical Encoder For Adaptive Optics Mirror Segments	
42832	NASA	Digital Optics Corporation 5900 Northwoods Business Pkwy, Suite Charlotte NC 28269	$69,178 Phase: 1 Minority: Woman:
		Topic: Proximity Printing of Micro-Optics Using Phase Shifting Masks	
42833	NASA	Digital Optics Corporation 5900 Northwoods Business Pkwy, Suite Charlotte NC 28269	$69,969 Phase: 1 Minority: Woman:
		Topic: Laser welding, bonding and joining using diffractive optical elements	
42045	HHS	ELCATECH, INC. 101 N CHESTNUT ST, SUITE 203 Winston-salem NC 27101	$100,000 Phase: 1 Minority: Woman:
		Topic: SYSTEM FOR SENSITIVE DETECTION OF BACTERIAL PATHOGENS	
42185	HHS	ELCATECH, INC. 101 N CHESTNUT ST, SUITE 203 Winston-salem NC 27101	$100,000 Phase: 1 Minority: Woman:
		Topic: AUTOLOGOUS ANTIBODIES IN OVARIAN CANCER	
42351	HHS	ELCATECH, INC. 101 N CHESTNUT STREET Winston-salem NC 27101	$100,000 Phase: 1 Minority: Woman:
		Topic: AMPLIFIED CARD IMMUNOASSAY FOR DRUGS IN SALIVA	
42135	HHS	GENE TEC CORPORATION 205 WINTERBERRY RIDGE DRIVE Durham NC 27713	$99,996 Phase: 1 Minority: Woman:
		Topic: GENETIC ANALYSIS OF TUMORS IMPRINTED ON NOVEL MATRICES	

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address		Award Amount
40695	AF	GEOPHEX, LTD. 605 Mercury St. Raleigh	NC 27603	$99,633 Phase: 1 Minority: Woman:
		Topic: Broadband Electromagnetic Sensing for Weapons Detection		
41510	ARMY	GEOPHEX, LTD. 605 Mercury Street Raleigh	NC 27603	$99,920 Phase: 1 Minority: Woman:
		Topic: Broadband Electromagnetic Sensing for the Detection and Discrimation of Buried Unexploded Ordinance		
37175	DOE	Geophex, Ltd. 605 Mercury Street Raleigh	NC 27603-2343	$749,058 Phase: 2 Minority: Woman:
		Topic: Passive and Active Low-Frequency Electromagnetic Spectroscopy for Airborne Detection of Underground Facilities		
42446	HHS	IMAGE ASSOCIATES 4909 WINDY HILL DR Raleigh	NC 27609	$95,036 Phase: 1 Minority: Woman:
		Topic: PEDIATRIC HIV PATIENT EDUCATION CDROM		
41376	AF	INNOVATECH, INC. 4608-D Industry Lane Curham	NC 27713	$99,987 Phase: 1 Minority: Woman:
		Topic: Hazardous Waste Minimization of Paint Overspray Via Medialess Dynamic Particle Filtration		
33964	HHS	Independent Living Resources, Inc. 4324 THETFORD RD Durham	NC 27707	$545,953 Phase: 2 Minority: Woman:
		Topic: PERSONAL SAFETY FOR HUMAN SERVICE PROVIDERS		
42675	EPA	Industrial Microwave Systems LLC 5107 Carolwood Lane Durham	NC 27713	$69,500 Phase: 1 Minority: Woman:
		Topic: Improved Method for in Situ Soil Remediation: The Modified "Lasagna" Process		

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount
41908	DOA	Industrial Microwave Systems,	$64,750

2 Davis Drive, P.O. Box 13853 Phase: 1
Research T NC 27709 Minority:
Woman:

Topic: A Method for Efficiently and Effectively Steaming Vegetables Using a Standard Microwave

41320 DARP Integrated Electronic Innovations $95,671
310 N. Dixon Ave Phase: 1
Cary NC 27513 Minority:
Woman:

Topic: Synthetic Muscle Effector for Micro-Robotic Taggant Platforms

41963 HHS Integrated Laboratory Systems, In $99,989
Phase: 1
Durham NC Minority: M
Woman:

Topic: SPERMATOGONIAL MUTATIONS IN TRANSGENIC C275X174 MICE

42565 HHS LIFESKILLS, INC. $100,000
2020 WEST MAIL ST, SUITE 100 Phase: 1
Hillsborough NC 27705 Minority:
Woman:

Topic: DEVELOPMENT OF A VIDEO TO TEACH THE LIFESKILLS WORKSHOP

39523 HHS Link Technology, Inc. $1,192,775
5605 Spring Ct. Phase: 2
Raleigh NC 27624 Minority:
Woman:

Topic: NOVEL ASSAY FOR MEASUREMENT OF ENDOTOXIN

41951 HHS Natural Pharmacia Internation $100,000
Phase: 1
Research Triangle NC Minority:
Woman:

Topic: MEDICATIONS DEVELOPMENT--PUERARIN --SBIR PHASE I

41993 HHS Novalon Pharmaceutical Corporation $99,566
214 WEST CAMERON AVENUE Phase: 1
Chapel Hill NC 27516 Minority:
Woman:

Topic: MOLECULAR RECOGNITION OF CELL DEATH DOMAINS

41851 DOE Paradigm Genetics, Inc. $75,000
P.O. 14528 Phase: 1
Research T NC 27709-4528 Minority:
Woman:

Topic: Yield Enhancement Through Gene Discovery for Disease Control□

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount

41905 DOA QEC $64,671
P.O. Box 1601 Phase: 1
Carrboro NC 27510 Minority:

Woman:

Topic: Direct Measurement of Seepage to Groundwater from Agricultural Lagoons

41813 DOE Quantum Research Services, Inc $75,000
5410-W Apex Highway Phase: 1
Durham NC 27713-9434 Minority:
Woman: W

Topic: Development of Fibre Channel Disk Clusters

35411 NSF Sun Dance $400,000
4110 Hulon Drive Phase: 2
Durham NC 27705 Minority:
Woman: W

Topic: Investigation of Novel Genetic Resource for Rootworm Resistance in Corn

41954 HHS TANGLEWOOD RESEARCH, INC. $97,313
Phase: 1
Clemmons NC Minority:
Woman:

Topic: DISSEMINATING PREVENTION RESEARCH VIA THE INTERNET

42002 HHS TANGLEWOOD RESEARCH, INC. $99,654
2511 NEUDORF RD, SUITE 1 Phase: 1
Clemmons NC 27012 Minority:
Woman:

Topic: HEALTH GUIDE TO OPTIMIZE THE HEALTH OF OLDER ADULTS

42239 HHS TANGLEWOOD RESEARCH, INC. $97,211
6363 CEPHIS DR Phase: 1
Clemmons NC 27012 Minority:
Woman:

Topic: DRUG PREVENTION MEDIATING VARIABLES SURVEY

42249 HHS TANGLEWOOD RESEARCH, INC. $94,601
2511 NEUDORF RD, SUITE I Phase: 1
Clemmons NC 27012 Minority:
Woman:

Topic: DRUG PREVENTION IN HIGH SCHOOLS--ALL STARS, SR

41601 ARMY TECHNOCHEM COMPANY $100,000
203-A Creek Ridge Rd. Phase: 1
Greensboro NC 27406 Minority: M
Woman:

Topic: Long-Cycle Life Metal Hidride Alloys

09/28/99 Small Business Administration Page 7
Office of Technology
Small Business Innovation Research Program

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount

42240 HHS TELEPATHY ENTERTAINMENT, INC. $99,778
5321 VENTURA DRIVE Phase: 1
Durham NC 27712 Minority:
Woman:

Topic: THEORY BASED DRUG ABUSE PREVENTION FOR VIDEO GAMES

41640 SOCO TRIANGLE RESEARCH & DEV. CORP. $99,999
P.O. Box 12696 Phase: 1
Research Triangle NC 27709 Minority:
Woman:
Topic: Hybrid Lightweight Protective Body Armor with Impact Absorption and Passive Thermal Management

43543 NSF Triangle Res & Devel Corp $99,998
P O Box 12696 Phase: 1
Research Triangle NC 277092696 Minority:
Woman: n
Topic: SBIR Phase I: Stabilization of Microenvironmental Temperatures on Plant Surfaces with Microe

32754 NAVY Triangle Research & Development $598,986
P. O. Box 12696 Phase: 2
Reserach Triangle NC 27709 Minority:
Woman:
Topic: Lightweight, Regenerative MicroPCM Portable Environmental Control Systems (PECS) Garments

35630 NSF Triangle Research & Dev Corp. $400,000
P O Box 12696 Phase: 2
Research Triangle NC 277092696 Minority:
Woman:
Topic: Regulation of Moisture and Thermal Microenvironments to Improve Mycoherbicides

41876 DOA Triangle Research & Developmen $65,000
P.O. Box 12696 Phase: 1
Research T NC 27709 Minority:
Woman:
Topic: Phyllosphere Microclimate Regulation with MicroPCMs to Improve Mycoherbicides

42442 HHS Triangle Research And Development $100,000
Triangle Research & Development Phase: 1
Research Triangle NC 12696 Minority:
Woman:
Topic: UNIQUE HAND HELD AUDIO ANNOUNCING SYSTEM

SBIR Awardees for Fiscal Year(s): 1998

ID	Agency	Company Name & Address	Award Amount
32891	ARMY	VISUAL SCIENCES, INC. P.O. Box 90335 Raleigh NC 27613	$684,304 Phase: 2 Minority: Woman:
		Topic: A Comprehensive FEA Model for Design Optimization of Protective Masks	
36334	AF	WALLACE & CO. P.O. Box 38668	$738,438 Phase: 2

Greensboro NC 27438 Minority:
Woman:
Topic: Detail Design & Development of Generic Production Cost Model (PCM)

34354 HHS Xenobiotic Detection Systems, Inc. $754,015
1601 E GEER ST, STE S Phase: 2
Durham NC 27705 Minority:
Woman:
Topic: VALIDATION OF SERUM BIOASSAY FOR DIOXIN-LIKE TOXICANTS

Martha Walston (Fiscal Research)

From: Martha Walston (Fiscal Research)
Sent: Wednesday, June 12, 2002 3:19 PM
To: Rep. Michael Decker
Cc: Adam Levinson (Fiscal Research)
Subject: Request regarding Qualified Business Venture Tax Credit

Rep. Decker, Adam Levinson, fiscal analyst on our staff has asked the following entitities to provide us with the amount of the grants they have given in the preceding three years and to whom:

- NC Technological Development Authority, Inc
- NC First Flight, Inc
- NC Biotechnology Center,
- Microelectronics Center of NC,
- Kenan Institute for Engineering, Technology, and Science, and
- Federal Small Business Innovation Research Program.

We will get it to you as soon as possible.

Martha K. Walston, Staff Attorney
Room 619, Legislative Office Building
Raleigh, N.C. 27603-5925
Phone: (919) 733-4910
Fax: (919) 715-3589

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE.**

☐ Committee Substitute for
H.B. 1609 A BILL TO BE ENTITLED AN ACT RELATING TO INVESTMENTS BY THE CITY OF DURHAM.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1609
PROPOSED COMMITTEE SUBSTITUTE H1609-CSLA-70 [v.1]

6/25/2002 12:53:46 PM

Short Title: Durham City Investments. (Local)

Sponsors:

Referred to:

June 11, 2002

A BILL TO BE ENTITLED

AN ACT RELATING TO INVESTMENTS BY THE CITY OF DURHAM.

The General Assembly of North Carolina enacts:

SECTION 1. The City of Durham, or any governing body, agency, person, corporation or other entity that contracts with the City for the investment, care or administration of monies held by the City in its fiduciary funds, may invest and reinvest monies in such funds in one or more of the types of securities or other investments as authorized by State law for the State Treasurer in G.S. 147-69.2.

SECTION 2. This act shall apply only to monies in the City's fiduciary funds. The City Council may adopt limitations on investment and reinvestments of monies in the City's fiduciary funds, provided that not more than fifty percent (50%) of the monies held in these funds may be invested in common or preferred stocks.

SECTION 3. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the City of Durham fiduciary funds

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

HOUSE BILL 1609

Short Title:	Durham City Investments.	(Local)
Sponsors:	Representatives Miller; and Luebke.	
Referred to:	Local Government I.	

June 11, 2002

A BILL TO BE ENTITLED

AN ACT RELATING TO INVESTMENTS BY THE CITY OF DURHAM.

The General Assembly of North Carolina enacts:

SECTION 1. The City of Durham, or any governing body, agency, person, corporation or other entity that contracts with the City for the investment, care or administration of monies held by the City in the funds listed in Section 2 of this act, may invest and reinvest monies in such funds in one or more of the types of securities or other investments as authorized by State law for the State Treasurer in G.S. 147-69.2.

SECTION 2. This act shall apply only to the City's Enterprise, Capital Projects, Fiduciary and Internal Service funds. The City Council may adopt limitations on investment and reinvestments of monies in such funds, provided that not more than eighty percent (80%) of the monies held in any City Fiduciary funds, fifty percent (50%) of the monies held in any City Enterprise or Capital Project funds, and twenty-five percent (25%) of the monies held in any City Internal Service funds may be invested in common or preferred stocks.

SECTION 3. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the funds listed in Section 2 of this act.

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

HOUSE BILL 1609:
Durham City Investments

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Miller
Date:	June 25, 2002	**Analysis by:**	Martha Walston
Version:	H1609-CSLA-70		Committee Counsel

SUMMARY: The proposed committee substitute for HB 1609 authorizes the City of Durham or any entity that contracts with the City for administration of the monies that are held in the City's fiduciary funds to invest these monies in the same manner that the State Treasurer may invest funds under G.S. 147-69.2. No more than 50% of monies in the fiduciary funds may be invested in common or preferred stocks. The bill is effective when it becomes law.

CURRENT LAW: Unless local legislation is enacted a unit of local government may invest funds only as set forth in the Local Government Budget and Fiscal Control Act. G.S. 159-30 authorizes local governments to invest the cash balance of any fund in the following: certificates of deposit and securities. Securities include obligations of the U.S., obligations of federal banks and other federal agencies, obligations of the State, bonds and notes of N.C. local government or public authority, savings certificates of a N.C. or federal savings and loan association, prime quality commercial paper, bills of exchange or time drafts drawn or accepted by a commercial bank, participating shares in a mutual fund for local government investment, certain commingled investment pools, and repurchase agreements with respect to U.S. obligations

BILL ANALYSIS: House Bill 1609 would expand the City of Durham's investment possibilities with respect to its fiduciary funds[1], provided that not more than 50% of the monies in these funds may be invested in common or preferred stocks. The City's fiduciary funds include a cemetery perpetual care fund and a transit trust fund. The City would be authorized to invest the idle monies in its fiduciary funds in the same manner as the law allows the State Treasurer to invest cash credited to special funds, the General Fund, and the Highway Fund. These investment options include those in G.S. 159-30 plus general obligations of other states; general obligations of cities, counties and special districts of North Carolina; asset-backed securities; preferred or common stock of duly incorporated companies, and obligations of any legal entity if the obligations bear high ratings.

The original version of HB 1609 would also have expanded the City's investment authority to the monies in its Enterprise Fund, Capital Projects Fund, and Internal Service Fund.

BACKGROUND: Similar legislation has been enacted previously for the following:

- Durham County (Community Health Trust Fund, S.L. 1999-101)
- Forsyth County (Community Health Special Reserve Fund, S.L. 98-44)

[1] Fiduciary funds are funds held by a local government in a fiduciary capacity, acting as trustees or agents for individuals, associations, or other governments.

- Pitt County (equity assets funds received from the transfer of Pitt County Memorial Hospital, S.L. 1999-48)
- City of Winston-Salem (Winston-Salem Police Officers Retirement Fund, employee benefits fund, risk reserve fund, Cemetery Perpetual Care Fund, Capital Reserves Fund, S.L. 98-36)

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1662 A BILL TO BE ENTITLED AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROANOKE RAPIDS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1662
PROPOSED COMMITTEE SUBSTITUTE H1662-PCS7381-LA-69

Short Title: Roanoke Rapids Annexation. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the City of Roanoke Rapids:

Being all that certain tract or parcel of land situate in Weldon Township, Halifax County, North Carolina, more particularly described as follows: Beginning at a point; said point being the southwest corner of property belonging to Wilbur C. Overton as described in deed book 1637, page 401, Halifax Public Registry; said point also being the northwest corner of Lot Number One of Roanoke Square Subdivision, Phase One, as shown on plat recorded in Plat Cabinet 6, Slide 2-H, Halifax County Public Registry; said point also being N 73-74-35 E, 558.22 feet from North Carolina Geodetic Survey Station Patrol; said point also being located on the eastern right of way line of N.C. Route Number 125; thence from said point of beginning along the lines dividing this property and property of Wilbur C. Overton the following course and distances: N 74-20-19 E 250 feet, N 29-57-41 W 292.29 feet, and S 58-45-14 W 250.00 feet, to the eastern right of way of N.C. Route Number 125; thence along the eastern right of way of N.C Route Number 125 the following course and distances: N 31-58-28 W 149.02 feet, N 31-35-11 W 160.95 feet, N 31-12-51 W 28.63 feet, N 28-35-06 W 102.11 feet, and N 24-05-27 W 162.57 feet to a point dividing this property and property now or formerly belonging to Robert Taylor Wilson, Sr. Et Ux; thence along the line dividing his property and the property of Robert Taylor Wilson, Sr. Et Ux N 69-25-55 E 329.96 feet; thence along the lines dividing this property and property of D & D Land Sales the following course and distances: S 62-04-06 E 37.20 feet, S 70-52-21 E 337.00 feet, N 19-23-23 E 149.00 feet, S 70-49-43 E 410.52 feet, N 19-10-17 E 200 feet, S 70-49-43 E 230.91 feet, and S 75-57-42 E 87.66 feet to the western right of way of Interstate 95; thence along the western right of way of Interstate 95 the following course and

distances: S 23-09-41 W 77.55 feet, S 23-57-37 W 290.42 feet, S 29-39-19 W 67.95 feet, S 31-50-15 W 46.87 feet, S 33-56-11 W 46.95 feet, S 35-52-35 W 46.79 feet, S 37-57-54 W 46.80 feet, S 39-57-28 W 46.82 feet, S 41-41-22 W 46.66 feet, S 43-51-09 W 47.04 feet, S 45-26-54 W 37.36 feet, S 50-27-48 W 290.80 feet, S 52-27-32 W 63.19 feet, S 52-27-32 W 146.59 feet, and N 89-41-04 W 102.36 feet to the eastern right of way of N.C. Route Number 125; thence along the eastern right of way of N.C. Route Number 125 the following course and distances: N 39-59-49 W 197.80 feet, and N 32-26-52 W 45.39 feet to the point and place of beginning; said tract or parcel of land containing 19.26 Acres more or less and being all of Roanoke Square, Phase One and Phase Two, as shown on plats recorded in Plat Cabinet 6, Slide 2-H and Plat Cabinet 6, Slide 20-P, Halifax Public Registry, to which reference is hereby had and made as part of this description.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1662

Short Title:	Roanoke Rapids Annexation.	(Local)
Sponsors:	Representatives J. Crawford; and Allen.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is added to the corporate limits of the City of Roanoke Rapids:

Roanoke Square Subdivision Phase One (Lots 1-3) and Roanoke Square Subdivision Phase Two (Lots 4-10).

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

HOUSE BILL 1662:
Roanoke Rapids Annexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. J. Crawford and Allen
Date:	June 24, 2002	**Analysis by:**	Martha Walston Committee Counsel
Version:	H1662-PCS7381-LA-69		

SUMMARY: House bill 1662 is a local bill that annexes certain property to the corporate limits of the City of Roanoke Rapids in Halifax County. The proposed committee substitute contains a description of the property to be annexed. The act is effective when it becomes law.

CURRENT LAW: Annexation is one method that a city may employ to extend its corporate limits, and the process must be done in accordance with Article 4A of Chapter 160A of the General Statues. Annexation may be either voluntary or involuntary. A voluntary annexation requires that the governing board of a municipality pass an ordinance upon presentation of a petition signed by the owners of all real property within the area to be annexed. An involuntary annexation requires, among other things, that the property meet certain characteristics:

- The area proposed to be annexed must be adjacent or contiguous to the municipality's boundaries;
- At least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary; and
- No part of the area may be included within the boundary of another incorporated municipality.

In addition to the requirements concerning location of the area in relation to the municipality's existing boundaries, the area must also be "developed for urban purposes" by meeting one of several standards concerning population, density, and development.

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: The Proposed Committee Substitute annexes the described property, containing 19.26 acres more or less, to the corporate limits of the City of Roanoke Rapids. This property contains all of Roanoke Square Subdivision Phase One and Roanoke Square Subdivision Phase Two.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1747 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE BOARD OF CHIROPRACTIC EXAMINERS TO COLLECT A FEE FOR THE ANNUAL RECERTIFICATION OF CHIROPRACTIC DIAGNOSTIC IMAGING TECHNICIANS.

☐ 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 ☐ ☐.

☒ X 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1747
PROPOSED COMMITTEE SUBSTITUTE H1747-PCS6450-LA-71

Short Title: Chiropractic Technicians Fee. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF CHIROPRACTIC EXAMINERS TO COLLECT A FEE FOR THE ANNUAL RECERTIFICATION OF CHIROPRACTIC DIAGNOSTIC IMAGING TECHNICIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-143.2 reads as rewritten:

"**§ 90-143.2. Certification of diagnostic imaging technicians.**

(a) The State Board of Chiropractic Examiners shall certify the competence of any person employed by a licensed chiropractor practicing in the State if the employee's duties include the production of diagnostic images, whether by X ray or other imaging technology. Applicants for certification must demonstrate proficiency in the following subjects:

(1) Physics and equipment of radiographic imaging;

(2) Principles of radiographic exposure;

(3) Radiographic protection;

(4) Anatomy and physiology;

(5) Radiographic positioning and procedure.

The State Board of Chiropractic Examiners may adopt rules pertaining to initial educational requirements, examination of applicants, and continuing education requirements as are reasonably required to enforce this provision.

(b) Any person seeking to renew a certification of competence previously issued by the Board shall pay to the secretary of the Board a fee as prescribed and set by the Board which fee shall not be more than fifty dollars ($50.00)."

SECTION 2. This act becomes effective August 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1747

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

H1747-ALA-61 [v.1]

Date June 26, ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative ~~Luebke~~ Allen

moves to amend the bill on page 1, line 24
by deleting the word "July" and substituting the word "August".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1747

Short Title:	Chiropractic Technicians Fee.	(Public)
Sponsors:	Representative Baddour.	
Referred to:	Finance.	

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE BOARD OF CHIROPRACTIC EXAMINERS TO COLLECT A FEE FOR THE ANNUAL RECERTIFICATION OF CHIROPRACTIC DIAGNOSTIC IMAGING TECHNICIANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-143.2 reads as rewritten:

"**§ 90-143.2. Certification of diagnostic imaging technicians.**

(a) The State Board of Chiropractic Examiners shall certify the competence of any person employed by a licensed chiropractor practicing in the State if the employee's duties include the production of diagnostic images, whether by X ray or other imaging technology. Applicants for certification must demonstrate proficiency in the following subjects:

(1) Physics and equipment of radiographic imaging;
(2) Principles of radiographic exposure;
(3) Radiographic protection;
(4) Anatomy and physiology;
(5) Radiographic positioning and procedure.

The State Board of Chiropractic Examiners may adopt rules pertaining to initial educational requirements, examination of applicants, and continuing education requirements as are reasonably required to enforce this provision.

(b) Any person seeking to renew a certification of competence previously issued by the Board shall pay to the secretary of the Board a fee as prescribed and set by the Board which fee shall not be more than fifty dollars ($50.00)."

SECTION 2. This act becomes effective July 1, 2002.

HOUSE BILL 1747:
Chiropractic Technicians Fee

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Baddour
Date:	June 25, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1747 authorizes the Board of Chiropractic Examiners to collect a fee of not more than $50 for the annual recertification of an employee of a chiropractor if that employee's duties include the production of diagnostic images (x-rays).***

CURRENT LAW: The State Board of Chiropractic Examiners must certify the competence of any person employed by a licensed chiropractor practicing in the State if the employee's duties include the production of diagnostic images, by x-ray or other imaging technology. When applying for certification, the employee must demonstrate proficiency in the following subjects:

1. Physics and equipment of radiographic imaging;
2. Principles of radiographic exposure;
3. Radiographic protection;
4. Anatomy and physiology;
5. Radiographic positioning and procedure.

roficiency in the above areas is shown by the following:

- completion of a Board-approved course in radiologic technology that is at least 50 hours in length and taught by an instructor who is a member of the radiology faculty at a college accredited by the Council on Chiropractic Education; and
- passage of a proficiency examination administered by or under the authority of the Board.

A person who is registered "active" with the American Chiropractic Registry of Radiologic Technologists is deemed to have satisfied the above educational requirements.

Each year the certificate of competency may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. Any person whose initial certificate expires less than 12 months after issuance is not required to obtain continuing education until entering the second year of certification.

BILL ANALYSIS: House Bill 1747 authorizes the State Board of Chiropractic Examiners to impose a fee of not more than $50 for renewal of a certification of competence previously issued to an employee of a licensed NC chiropractor.

Current law requires a practicing chiropractor to pay an annual renewal license fee of not more than $150 and present evidence to the Board that the chiropractor has attended two days of approved continuing education during the preceding 12 months. The initial fee for licensure as chiropractor is $100.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1747 (First Edition)

SHORT TITLE: Chiropractic Technicians Fee

SPONSOR(S): Representative Baddour

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	**No General Fund Impact**				
Board – Fees	**See Assumptions and Methodology**				

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

EFFECTIVE DATE: July 1, 2002

BILL SUMMARY: The North Carolina Board of Chiropractic Examiners (the Board) licenses individuals qualified to practice chiropractic, including physicians and technicians in the state. This bill relates only to chiropractic diagnostic imaging technicians (X-ray or other imaging technology technicians.) The Board ensures licensing requirements are met prior to certification, such as education and proficiency levels in basic X-ray, and monitors the annual requirement of six hours of continuing education. Currently, no tangible update occurs on the technicians' certificates. This legislation will help formalize the annual recertification process by requiring an annual recertification fee paid to the Secretary of the Board which shall not be more than fifty dollars ($50.) The fee is the only one that will be paid annually by technicians to maintain certification.

ASSUMPTIONS AND METHODOLOGY: All fees and revenues generated by the Board remain with the Board, thus the bill will have no fiscal impact on the General Fund. However, the legislation will have an impact on the revenues of the Board.

Because no formal update presently occurs each year, no exact number exists of practicing technicians in the state. The Board knows that there are 1,252 chiropractic doctors in North Carolina. However, not every doctor has a technician in his or her office. Based on the continuing education data it tracks, the Board estimates there are no more than 250-300 technicians in the state. Due to turnover and retraining, the total number is not expected to change over time.

The Board has not yet determined the annual recertification fee it will charge to technicians, but it did not believe it would charge greater than $20. The table below shows the estimated revenue at three different fee levels for 275 technician recertifications.

Fee	FY 2002-03 Revenue	FY 2003-04 Revenue	FY 2004-05 Revenue	FY 2005-06 Revenue	FY 2006-07 Revenue
$10	$2,750	$2,750	$2,750	$2,750	$2,750
$20	$5,500	$5,500	$5,500	$5,500	$5,500
$50	$13,750	$13,750	$13,750	$13,750	$13,750

SOURCES OF DATA: North Carolina Board of Chiropractic Examiners

TECHNICAL CONSIDERATIONS: The Board has not set an exact implementation date; however, they intend to use a calendar year timeframe with certificates being renewed in January.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 25, 2002

Minutes
House Committee on Finance

July 3, 2002

The House Committee on Finance met on Wednesday, July 3, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building.

Rep. Gordon Allen, presiding Chair, called the meeting to order. The following members were present: Chairmen Monroe Buchanan, Paul Luebke, and William Wainwright; Vice-Chairs Dewey Hill and Mary Jarrell; and Representatives Martha Alexander, John Blust, Russell Capps, Leslie Cox, Paul Decker, Andy Dedmon, Zeno Edwards, Pryor Gibson, Lyons Gray, Jo Hackney, Hugh Holliman, Bill Hurley, Linda Johnson, Danny McComas, Eugene McCombs, Ed McMahan, Art Pope, John Rayfield, Edgar Starnes, Jennifer Weiss, Shelly Willingham, Connie Wilson, and Larry Womble. Staff in attendance included Trina Griffin, Mary Shuping, Martha Walston, Richard Bostic, and Linda Millsaps.

Chairman Allen thanked the Sergeant-at-Arms staff in attendance: Dusty Rhoades, Bob Fowler, Bill Freeman, and Walter Spell, and introduced the pages: Ricky Bennett from Wake County, David England from Cumberland County, Frances Tate from Haywood County, Kelly Hilton from Iredell County, and Ken Powell from Wake.

The following bills were considered:

HB 1525, A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF RED CROSS. Rep. Goodwin, one of the sponsors along with Reps. Gibson and Barbee, explained the bill, which would incorporate the town of Red Cross and enact a charter to provide for its governance and to subject its residents to a municipal tax levied for the year beginning July 1, 2002. Upon motion of Rep. Buchanan, the Proposed Committee Substitute (PCS) was adopted for discussion. Rep. Gibson moved to give the PCS a favorable report, and an unfavorable report to the original bill. The motion carried. Copies of the PCS, Bill and Bill Summary are attached as part of these minutes.

HB 1684, A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE. Reps. Holliman and Dockham, sponsors, explained that House Bill 1684 is a local bill that removes certain described property from the corporate limits of the City of Thomasville in Davidson County. Upon motion of Rep. Buchanan, the Proposed Committee Substitute (PCS) was adopted for discussion. Rep. Holliman explained that both the City and the residents of the area have agreed to the de-annexation and made a motion to give the PCS a favorable report, and an unfavorable report to the original bill. The motion carried. Copies of the PCS, Bill, and Bill Summary are attached as part of these minutes.,

HB 1629, A BILL TO BE ENTITLED AN ACT AUTHORIZING THE CITY OF THOMASVILLE TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE. Rep. Holliman explained that this is a local bill that authorizes the City of Thomasville in Davidson County to convey approximately 7.264 acres by private sale; with or without monetary consideration, to the Central United Methodist Church. Upon motion of Rep. Womble, the Committee voted for a favorable report. Copies of the Bill and Summary are attached.

HB 1690, A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF CANDOR. Bill sponsor Rep. Gibson explained the bill annexes a 75-acre piece of undeveloped land currently owned by one property owner to the Town of Candor. Upon motion by Representative Buchanan, the Proposed Committee Substitute (PCS) was adopted for discussion. The proposed committee substitute would add a provision that would also annex a park owned by the Town of Norwood and a 100-acre residential tract surrounded by the city limits to the Town of Norwood. Representative Womble moved to give the PCS a favorable report, and an unfavorable report to the original bill. The motion carried. Copies of the PCS, Bill, and Bill Summary are attached as part of these minutes.

HB 1568, A BILL TO BE ENTITLED AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION. Rep. Weiss was recognized to explain the bill. In response to questions, she reiterated that the bill was recommended by the Environmental Review Commission. Upon motion of Rep. Hill, the bill was given a favorable report. Copies of the Bill, Summary, and Fiscal Note are attached as part of these minutes.

SB 861, A BILL TO BE ENTITLED AN ACT TO INCREASE THE NUMBER OF QUALIFIED DENTAL PRACTITIONERS IN THE STATE BY AUTHORIZING THE BOARD OF DENTAL EXAMINERS TO LICENSE BY CREDENTIALS PERSONS WHO ARE LICENSED TO PRACTICE DENTISTRY OR DENTAL HYGIENE IN OTHER STATES AND WHO OTHERWISE MEET STATE REQUIREMENTS FOR LICENSE BY CREDENTIALS, TO ISSUE A LIMITED VOLUNTEER DENTAL LICENSE, TO ISSUE AN INSTRUCTOR'S LICENSE, AND TO IMPOSE APPLICATION AND RENEWAL FEES FOR LICENSURE AUTHORIZED UNDER THIS ACT. Senator Purcell explained the bill, and in reply to questions from Committee members, stated that the bill authorizes the N.C. Board of Dental Examiners to:

- Issue NC licenses to dentists and dental hygienists by credential review.
- Issue limited volunteer licenses to dentists to practice, without compensation, in non-profit health care facilities serving low-income populations.
- Issue instructor's licenses to dentists who practice in or on behalf of a dental school or academic medical center or teaching hospital.

- Impose fees in the amounts up to: 1) $2000 for a dental license issued by credentials; 2) $1000 for a dental hygiene license issued by credentials; and 3) $100.00 for a limited volunteer license.

Representative Jarrell offered two amendments that would make technical changes to the bill. Upon motion of Rep. Jarrell, the amendments were adopted.

In reply to questions from Committee members, Mr. William H. Potter, Jr., representing the NC Dental Society, and Mr. Eddie Caldwell, representing the NC Dental Hygienists, both stated that their groups supported the bill. Rep. Thomas Wright, Chair of the Health Committee, stated that the bill had approval of his committee.

Representative Womble moved to give the bill a favorable report with the amendments rolled in. Copies of the Amendments, Bill, Bill Summary, and Fiscal Note are attached as part of these minutes.

There being no further business, Chairman Allen adjourned the meeting at 9:15 A.M.

Respectfully submitted,

Representative Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

House Bills 1525, 1684, 1629, 1690, and 1568; Senate Bill 861
Committee Reports
Visitor Registration Sheet

AGENDA

House Finance Committee

July 3, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1525 **RED CROSS CHARTER – Reps. Barbee, Gibson, and Goodwin**

HB 1684 **THOMASVILLE DEANNEXATION – Reps. Dockham and Holliman**

HB 1629 **THOMASVILLE PRIVATE SALE – Reps. Dockham and Holliman**

HB 1690 **CANDOR ANNEXATION – Rep. Gibson**

HB 1568 **SEDIMENTATION ACT AMENDMENTS – Reps. Weiss and Hackney**

SB 861 **LICENSE BY CREDENTIALS/DENTISTRY – Sen. Purcell**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance — 7-3-02

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brock Winstead	NC Sierra Club
Alice Garland	EC
Elizabeth Isley	N.C. Community Colleges
Kym Burd	NCCCS
Jeyanne Wiles	NCCCS
Shayna Waites	intern
Colleen Kochanek	Dental Hygiene Association
Eddie Caldwell	NC Dental Hygiene Assn
Elaine Mejia	NC Budget and Tax Center
Cam Cuer	BPMHL
Brian Francis	Mcck Cnty

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Brown	Capitol Group
Kelly Shuffletter	The Capitol Group
Michelle Frazier	NC Bar Ass'n
Laura DeVivo	DENR
R. Neal Wilms	NCHSA
Doug Carrithers	NCSTA
Katie Hunter	NC State Watch
Lisa Percy	Capitol Group
Coleman Mehta	House Intern
Elizabeth Dalton	Bone & Associates
Martha Glass	Agriculture

VISITOR REGISTRATION SHEET

Finance — 7-3-02

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Barnes	Poyner Spruill LLP
John McKay	GOV OFFICE
Roz Savitt	WCCCC
Katherine Miller	NCASA
David Smith	Agriculture
Andrea Schrag	Rep. Alexander
MaryKatherine Hackney	Rep. Hackney
John Simon	Land Resources, DENR
Rob Meek	Senate Intern
Ken Melton	Alley Associates, Inc.
Willie Riddick	DOR

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCACC
Natalie English	Charlotte Chamber
Diana McLellan	Mercer & Assocs.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE.**

☐ Committee Substitute for
H.B. 1525 A BILL TO BE ENTITLED AN ACT TO INCORPORATE THE TOWN OF RED CROSS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1525

Committee Substitute Favorable 6/25/02

PROPOSED COMMITTEE SUBSTITUTE H1525-PCS7387-SO-77

Short Title: Red Cross Charter. (Local)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF RED CROSS.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Red Cross is enacted to read:

"CHARTER OF THE TOWN OF RED CROSS.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Red Cross are a body corporate and politic under the name 'Town of Red Cross'. The Town of Red Cross has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the town of Red Cross are as follows:

BEGINNING at the northwest corner of the property having pin number 559500704616, said point also being located on the boundary of the southern right-of-way of Lakewood Road, thence from said point of beginning along the southern right-of-way of Lakewood Road in a southwesterly direction approximately 1263 feet to the intersect of the boundary of the eastern right-of-way of NC 205 highway and the boundary of the southern right-of-way of Lakewood Road to a point, thence in a southerly direction with the eastern right-of-way of NC 205 Highway to the intersect of the boundary of the eastern right-of-way of NC 205 Highway and the boundary of the extended southern right-of-way of Hatley Burris Road to a point, thence in a southwesterly direction to the northeastern corner of the property having pin number 559400693440, said corner also being located on the boundary of the southern right-of-way of Hatley Burris Road, thence in a southwesterly direction with the southern right-of-way of Hatley Burris Road to the northwestern corner of the property having pin number 559400585598, said point also being located on the boundary of the

southern right-of-way of Hatley Burris Road, thence in a northwesterly direction to the southeastern corner of the property having pin number 559400583812, said point also being located on the boundary of the northern right-of-way of Hatley Burris Road, thence in a northwesterly direction to the northwestern corner of the above said property, thence in a northeasterly direction along the northeastern property lines of the properties having pin numbers 559400583812, 559400585948, 559400595151, and 559400597149 to the northeastern corner of the property having pin number 559400597149, thence in a northwesterly direction along the property line of the property having pin number 559400595534 to the northwestern corner of the above said property, thence in a northerly direction along the western property lines of the properties having pin numbers 559400594700 and 559400595534 to the southeastern corner of the property having pin number 559400591934, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction along the property line of the above said property to the northern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of Hilltop Road, thence in a southwesterly direction with the southern right-of-way of Hilltop Road to the northeastern corner of the property having pin number 559400499069, said corner also being located on the boundary of the southern right-of-way of Hilltop Road, thence in a southerly, the southwesterly, direction following the eastern and southeastern property lines of the above said property to the most southeastern corner of the above said property, thence in a northwesterly direction along the property line of the above said property to the southwestern corner of the above said property, thence in a northeasterly direction along the property lines of the above said property to the northwestern corner of the above said property, said corner also being located on the southern right-of-way of Hilltop Road, thence in a southwesterly direction with the southern right-of-way of Hilltop Road to the northeastern corner of the property having pin number 559400492694, said point also being located on the boundary of the southern right-of-way of Hilltop Road, thence in a southerly direction along the eastern property lines of the properties having pin numbers 559400492694, 559400493309, and 559400493102 to the northern most point of the property having pin number 559400483960, thence in a southeasterly direction along the property line of the above said property to the eastern most corner of the above said property, thence in a southwesterly direction along the southern property lines of the properties having pin numbers 559400483960 and 559400481784, thence in a northwesterly direction along the western property lines of the properties having pin numbers 559400481784, 559400480989, 559400490224, and 559400399466 to the northwestern corner of the property having pin number 559400399466, said corner also being located on the boundary of the southern right-of-way of Hilltop Road, thence in a northerly direction with the extended western property line of the property having pin number 559400399466 to a point on the boundary of the northern right-of-way of Hilltop Road, thence in a northeasterly direction with the northern right-of-way of Hilltop Road to the southwestern corner of the property having pin number 559400492854, said corner also being located on the boundary of the northern right-of-way of Hilltop Road, thence in a

northerly direction with the western property lines of the properties having pin numbers 559400492854 and 559500402236 to the northwestern corner of the property having pin number 559500402236, thence in a westerly direction with the southern property line of the property having pin number 559500402988 to the southwestern corner of the above said property, thence in a northerly direction along the western property line of the above said property to the southeastern corner of the property having pin number 559500410214, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of Peachtree Road, thence in a westerly direction along the southern right-of-way of Peachtree Road to the northeastern corner of the property having pin number 559500313054, said corner also being located on the boundary of the southern right-of-way of Peachtree Road, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a southwesterly, and then southeasterly, direction along the property line of the property having pin number 559500216320 to the southeastern corner of the property having pin number 559500216320, thence in a southwesterly direction along the southeastern property lines of the properties having pin numbers 559500216320 and 559500106395 to the southwestern corner of the property having pin number 559500106395, thence in a northwesterly direction along the western property line of the above said property to the southeastern corner of the property having pin number 559500103284, thence in a southeasterly direction along the southeastern property lines of the properties having pin numbers 559500103284 and 559500102204 to the southwestern corner of the property having pin number 559500102204, thence in a southeasterly direction along the northeastern property lines of the properties having pin numbers 559400099666 and 559400190449 to the southeastern corner of the property having pin number 559400190449, thence in a southwesterly direction along the property line of the above said property to the southwestern corner of the above said property, said corner also being located on the boundary of the eastern right-of-way of Hilltop Road, thence in a southwesterly direction along the extended southeastern property line of the above said property to a point on the boundary of the western right-of-way of Hilltop Road, thence in a northwesterly direction along the western right-of-way of Hilltop Road to a point where the extended northern property line of the property having pin number 559500002971 intersects on the boundary of the western right-of-way of Hilltop Road, thence in an easterly direction with the northern property line of the property having pin number 559500002971 to the northeastern corner of the above said property, thence in a southeasterly direction along the property line of the above said property to the southeastern corner of the above said property, thence in an easterly direction along the northern property lines of the properties having pin numbers 559500005607 and 559500006628 to the northeastern corner of the property having pin number 559500006628, thence in a southerly direction along the

eastern property lines of the properties having pin numbers 559500006628 and 559500007506 to the southeastern corner of the property having pin number 559500007506, said corner also being located on boundary of the northern right-of-way of Peachtree Road, thence in a northeasterly direction with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500100870, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in a northwesterly direction along the property line of the above said property to the northwestern corner of the above said property, thence in a northeasterly direction along the property line of the above said property to the northeastern corner of the above said property, thence in a southeasterly direction along the property line of the above said property to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in an easterly direction with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500113363, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in a northwesterly direction along the western property line of the above said property to the northwest corner of the above said property, thence with the northern property lines of the above said property and the property having pin number 559500115329 to the northeastern corner of the property having pin number 559500115329, thence in a southwesterly, and then southeasterly, direction along the eastern property line of the above said property to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in a northeasterly direction with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500210443, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in a northwesterly direction along the western property line of the above said property to the northwest corner of the above said property, thence in a northeasterly direction with the northwestern property lines above said property and the property line of the property having pin number 559500212612 to the northeastern corner of the property having pin number 559500212612, thence in an easterly direction with the northeastern property line of the above said property to the eastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of Peachtree Road, thence in a northeasterly, then easterly, direction with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500313054, thence in a northeasterly direction along the northwestern property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction with the northern property lines of the above said property and the property having pin number 559500319621 to the intersect of the property having pin number 559500412899, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction along the northern property lines of the properties having pin numbers 559500412899 and 559500511577 to the northwestern corner of the property having pin number 559500513793, thence in a northeasterly direction along the

northwestern property line of the above said property to the northeastern corner of the above said property, said corner also being located on the boundary of the western right-of-way of NC 205 Highway, thence in a northerly direction with the western right-of-way of NC 205 Highway to the southeastern corner of the property having pin number 559500437527, said corner also being located on the boundary of the western right-of-way of NC 205 Highway, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northeasterly along the northwestern property line of the above said property to the northwestern corner of the above said property, thence in a northerly direction with the western property line of the property having pin number 559500433884 to the northwestern corner of the above said property, thence in an easterly direction with the northern property line of the above said property to the northeastern corner of the above said property, thence in a westerly direction with the southern property line of the property having pin number 559500442720 to the southwestern corner of the above said property, thence in a westerly, and then southerly, direction with the southeastern property line of the property having pin number 559500341479 to the southeastern corner of the above said property, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly, and then westerly, direction with the southwestern property line of the above said property to the southeastern corner of the property having pin number 559500251010, thence in a westerly direction following the southern property lines of the properties having pin numbers 559500146881, 559500145737, 559500145901, 559500143857, and 559500141931 to the southeastern corner of the property having pin number 559500049896, thence in a southwesterly direction along the southern property lines of the properties having pin numbers 559500049896, 559500047693, 559500046581, 559500046414, 559500045318, 559500044202, and 559500043112 to the intersect of the property having pin number 559500043112, thence in a southeasterly direction along the property line of the property having pin number 559500043915 to the southeastern corner of the property having pin number 559500043915, thence in a southwesterly direction to the southern corner of the above described property, thence with the property line of the above described property to the southeastern corner of the property having pin number 558500955410, thence in a westerly direction along the southern property lines of the properties having pin numbers 558500955410, 558500952160, 558500951303, and 558500856241 to the southwestern corner of the property having pin number 558500856241, thence in a northerly direction to the southeastern corner of the property having pin number 558500748984, thence in a westerly direction to the southwestern corner of the above said property, said corner also being located on the boundary of the eastern right-of-way of Pless Mill Road, thence with the eastern right-of-way of Pless Mill Road to the northwest corner of the property having pin number 558500844115, said corner also being located on the boundary of the eastern right-of-way of Pless Mill Road, thence in a southeasterly direction with the northern property lines of the above said property and the property having pin number 558500835789 to the southeastern corner of the property having pin

number 558500835789, thence in a southwesterly direction along the eastern property line of the above said property to the southern corner of the above said property, said corner also being located on the boundary of the eastern right-of-way of Pless Mill Road, thence in a southerly direction with the eastern right-of-way of Pless Mill and then the eastern right-of-way of Hilltop Road to the northwest corner of the property having pin number 558500927048, said corner also being located on the boundary of the eastern right-of-way of Hilltop Road, thence in a northwesterly direction to the southeastern corner of the property having pin number 558500828710, said corner also being located on the boundary of the western right-of-way of Hilltop Road, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, said corner also located on the boundary of the eastern right-of-way of Pless Mill Road, thence in a northwesterly direction to the southeastern corner of the property having pin number 558500825910, said corner also being located on the boundary of the western right-of-way of Pless Mill Road, thence with the southwester, then western, then northwestern property line of the above said property to the northeastern corner of the above said property, said corner also being located on the boundary of the western right-of-way of Pless Mill Road, thence in a northerly direction with the western right-of-way of Pless Mill Road to the southeastern corner of the property having pin number 558500840628, said corner also being located on the boundary of the western right-of-way of Pless Mill Road, thence in a northwesterly direction along the southwesterly property lines of the properties having pin numbers 558500840628 and 558500748984 to the northwestern corner of the property having pin number 558500748984, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a northwesterly direction with the extended western property line of the above said property to a point on the boundary of the northern right-of-way of NC 24/27 Highway, also said point being the southwestern corner of the property having pin number 558500755321, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to a point where the northern boundary of the right-of-way of NC 24/27 Highway intersects with the western boundary of Running Creek Church Road, thence in a northerly direction with the western right-of-way of Running Creek Church Road to the point where the boundary of the western right-of-way of Running Creek Church Road intersects with the boundary of the northern right-of-way of Bethel Church Road, thence in an easterly direction along the northern right-of-way of Bethel Church Road to the southeastern corner of the property having pin number 558500874785, said corner also being located on the boundary of the northern right-of-way of Bethel Church Road, thence in a northerly direction along the eastern property line of the property having pin number 558500874785 to the northeastern corner of the above said property, thence in a northeasterly direction along the western property lines of the properties having pin numbers 558500971822, 558500982130, and 558500982395 to the northwestern corner of the property having pin number 558500982395, said corner also being located on the boundary of the southern right-of-way of Smith Grove Road, thence in a northerly direction with the northerly extended property line of the above said property to a point on the boundary of the northern right-of-way of Smith Grove Road, thence in an

easterly, then southerly, direction with the northern, and then eastern, right-of-way of Smith Grove Road to a point where the boundary of the eastern right-of-way of Smith Grove Road intersects with the boundary of the northern right-of-way of Bethel Church Road, thence in a westerly direction to the eastern corner of the property having pin number 558500875287, thence in a westerly direction along the southern property line of the properties having pin numbers 558500875287 and 558500872269 to the northeastern corner of the property having pin number 558500856992, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in an easterly direction along the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 558500954995, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction along the northern property line of the above said property to the northeastern corner of the above said property, thence in a southerly direction along the eastern property lines of the properties having pin numbers 558500954995 and 558500956841 to the southeastern corner of the property having pin number 558500956841, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to a point where the boundary of the northern right-of-way of NC 24/27 Highway intersects with the boundary of the western right-of-way of Bethel Church Road, thence in a northwestern direction with the western right-of-way of Bethel Church Road to a point in the boundary of the western right-of-way of Bethel Church Road intersects with the westerly extended northern property line of the property having pin number 559500056889, thence in a northeasterly direction with the extended northern property line of the above said property to the northwestern corner of the above said property, said point also being located on the boundary of the northeastern right-of-way of Bethel Church Road, thence in a northeasterly direction along the northern property line of the above said property to the northeastern corner of the above said property, thence in a southeasterly direction with the northeastern property lines of the above said property and the property having pin number 559500058626 to the southeastern corner of the property having pin number 559500058626, thence in a southwesterly direction to the southwestern corner of the property having pin number 559500250908, said point also being located on the boundary of the northern right-of-way of NC 24/27 Highway and on the boundary of the northeastern right-of-way of Bethel Church Road, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 559500256728, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, thence in a northeasterly direction along the northwestern property line to the northeastern corner of the above said property, thence in a southeasterly direction along the northern property lines of the properties having pin numbers 559500258785 and 559500352901 to the northeastern corner of the

property having pin number 559500352901, said point also being located on the boundary of the western right-of-way of Smith Grove Road, thence in a northerly direction with the western right-of-way of Smith Grove Road to the extended northwestern corner of the northern property line of the property having pin number 559500357853, said corner also located on the boundary of the western right-of-way of Smith Grove Road, thence in an easterly direction to the northwestern corner of the property having pin number 559500357853, said corner also being located on the boundary of the eastern right-of-way of Smith Grove Road, thence in a southeasterly direction along the northern property line of the above said property to the northeastern corner of the above said property, thence in a northeasterly direction along the northwestern property line of the property having pin number 559500355598 to the southeastern corner of the property having pin number 559500464329, thence in a northwesterly direction along the property line of the above said property to the western corner of the above said property, said corner also being located on the boundary of the eastern right-of-way of Smith Grove Road, thence in a southerly direction with the eastern right-of-way of Smith Grove Road to a point where the southerly extended southern property line of the property having pin number 559500363695 intersects with the boundary of the eastern right-of-way of Smith Grove Road, thence in a westerly direction to the southeastern corner of the above said property, said corner also being located on the boundary of the western right-of-way of Smith Grove Road, thence in a northwesterly direction along the southwestern property line of the above said property to the western most corner of the above said property, thence in a northeasterly direction along the northern property lines of the above said property and the property having pin number 559500366724 to the northeastern corner of the property having pin number 559500366724, thence in a southeasterly direction along the northeastern property line of the above said property to the intersect of the property having pin number 559500378012, thence in a northerly, then northeasterly, direction along the northern property line of the above said property to the northeastern corner of the above said property, said corner also being located on the boundary of the western right-of-way of Smith Grove Road, thence in a northeasterly direction with the extended northern property line to a point where the extended northern property line intersects with the boundary of the eastern right-of-way of Smith Grove Road, thence in a southerly direction with the eastern right-of-way of Smith Grove Road to the northwestern corner of the property having pin number 559500465989, said corner also being located on the boundary of the eastern right-of-way of Smith Grove Road, thence in a northeasterly direction with the northwestern property line of the above said property to the northeastern corner of the above said property, thence in a southerly, then northeasterly direction with the northeastern property line of the above said property to the intersect of the property having pin number 559500571799, thence in a northwesterly direction with the southwestern property line of the above said property and the property having pin number 559500487387 to the southeastern corner of the property having pin number 559500486524, thence in a southwesterly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction along the property line of the above said property to the

southeastern corner of the property having pin number 559500388126, thence in a westerly direction with the southern property line of the above said property to the southwestern corner of the above said property, said corner also being located on the boundary of the eastern right-of-way of Smith Grove Road, thence in a westerly direction with the westerly extended southern property line of the above said property to a point on the western boundary of the right-of-way of Smith Grove Road, thence in a northerly direction with the western right-of-way of Smith Grove Road to the intersect with the property having pin number 559500383023, said corner also being located on the boundary of the western right-of-way of Smith Grove Road, thence in a southwesterly direction along the eastern property line of the above said property to the southern most corner of the above said property, thence in a northwesterly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northeasterly direction along the western property line of the above said property to the southeastern corner of the property having pin number 559500382108, thence in a northwesterly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northeasterly direction along the western property line of the above said property to the southeastern corner of the property having pin number 559500380268, thence in a northwesterly direction to the southwestern corner of the above said property, thence in a northerly direction to the northwestern corner of the above said property, said corner also located on the boundary of the southern right-of-way of Smith Grove Road, thence in a northeasterly direction with the northerly extended western property line of the above said property to a point where the extended property line intersects with the boundary of the northern right-of-way of Smith Grove Road, thence in an easterly direction with the northern right-of-way of Smith Grove Road to the intersect with the property having pin number 559500388126, said corner also being located on the boundary of the northern right-of-way of Smith Grove Road, thence in a northeasterly direction along the northwestern property lines of the above said property and the property having pin number 559500486524 to the northwestern corner of the property having pin number 559500486524, thence in an easterly direction along the northern property lines of the properties having pin numbers 559500486524, 559500483868, 559500487884, 559500581817, and 559500584879 to the northeastern corner of the property having pin number 559500584879, said corner also being located on the boundary of the western right-of-way of Jacob Road, thence in an easterly direction with the extended northern property line of the above said property to the extended northeastern corner located on the boundary of the eastern right-of-way of Jacob Road, thence in a southerly direction with the eastern right-of-way of Jacob Road to the intersect of the boundary of the eastern right-of-way of Jacob Road and the boundary of the western right-of-way of Ridgecrest Road, thence in an easterly direction to the northwestern corner of the property having pin number 559500671304, said corner also being located on the boundary of the eastern right-of-way of Ridgecrest Road, thence in an easterly direction with the northern property lines of the properties having pin numbers 559500671304, 559500674219, 559500676214, 559500677223, and 559500678232 to the northeastern corner of the property having pin number

559500678232, thence in a southeasterly direction along the eastern property lines of the properties having pin numbers 559500679146, 559500770005, and 559500761927 to the southeastern corner of the property having pin number 559500761927, said corner also being located on the boundary of the northwestern right-of-way of Gaddis Road, thence in a northeasterly direction with the northwestern right-of-way of Gaddis Road to a point where the northwesterly extended northern property line of the property having pin number 559500765865 intersects with the boundary of the northwestern right-of-way of Gaddis Road, thence in a southeasterly direction to the northeastern corner of the property having pin number 559500765865, said corner also being located on the boundary of the southeastern right-of-way of Gaddis Road, thence in a southeasterly direction with the northern property line of the above said property to the southeastern corner of the above said property, thence in a southwesterly direction with the southeastern property of the above said property to the northeastern corner of the property having pin number 559500669099, thence in a southerly direction along the eastern property line of the above said property to the northwestern corner of the property having pin number 559500756605, thence in an easterly direction along the northern property lines of the properties having pin numbers 559500756605 and 559500758790 to the southwestern corner of the property having pin number 559500850878, thence in a northerly direction along the eastern property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction along the northern property line of the above said property to the northeastern corner of the above said property, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, thence in an easterly direction along the northern property lines of the properties having pin numbers 559500853711, 559500855722, 559500857713, and 559500859773 to the southwestern corner of the property having pin number 559500952932, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction along the northern property line of the above said property to the northeastern corner of the above said property, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, thence in an easterly direction to the northeastern corner of the property having pin number 559500953703, thence in a southerly direction to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 559500957855, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in a northerly direction along the western property lines of the above said property and the property having pin number 559500967325 to the northern corner of the property having pin number 559500967325, thence in a southerly direction with the eastern property lines of the above said property and the property having pin number 559500957855 to the southeastern corner of the property having pin number 559500957855, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway,

thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 650500056704, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in a northerly direction along the western property lines of the properties having pin numbers 650500056704 and 650500058931 to the northwestern corner of the property having pin number 650500058931, thence in an easterly direction to the northeastern corner of the above said property, thence in a southerly direction to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in an easterly direction along the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 650500262275, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, thence in an easterly direction along the northern property lines of the properties having pin numbers 650500262275, 650500265371, and 650500268540 to the northeastern corner of the property having pin number 650500268540, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, thence in an easterly direction along the northern property line of the property having pin number 650500360392 to the northeastern corner of the above said property, thence in a northerly direction along the western property line of the property having pin number 650500361593 to the northwestern corner of the property having pin number 650500361593, thence in an easterly direction to the northeastern corner of the above said property, thence in a southerly direction to the southeastern corner of the above said property, said corner also being located on the boundary of the northern right-of-way of NC 24/27 Highway, thence in a southerly direction with the extended eastern property line of the above said property to the extended southeastern corner located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500351705, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a southerly direction with the eastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500254762, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a southerly direction with the eastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction with the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction with the property line

of the above said property to the southeastern corner of the property having pin number 650500252734, thence in a westerly direction with the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction with the western property line of the above said property to the northwestern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500159460, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a southerly direction with the eastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction along the southern property lines of the properties having pin numbers 650500159460, 650500162556, and 650500151160 to the point where the property having pin number 650500151160 intersects with the boundary of the eastern right-of-way of Lakewood Road, thence in a southerly, and then southwesterly, direction along the eastern right-of-way of Lakewood Road to the intersect with the property having pin number 650500141160, said point also being located on the boundary of the southern right-of-way of Lakewood Road, thence in a southerly direction to the southeastern corner of the property having pin number 650500151160, thence in a westerly direction with the southern property lines of the properties having pin numbers 650500151160, 650500048958, and 650500045993 to the southwestern corner of the property having pin number 650500045993, thence in a southerly direction with the eastern property line of the above said property to the southeastern corner of the property having pin number 559500952193, thence in a northwesterly direction along the southern property line of the above said property to the northeastern corner of the property having pin number 559500844105, thence in a southerly direction along the eastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction along the southern property line of the above said property to the southwestern corner of the above said property, thence in a northerly direction with the western property line of the above said property to the northwestern corner of the above said property, thence in a westerly direction along the southern property line of the property having pin number 559500743314 to the southwestern corner of the above said property, thence with the western property lines of the properties having pin numbers 559500743314 and 559500741963 to the northwestern corner of the property having pin number 559500741963, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 559500548819, said corner also being located on the boundary of the southern right-of-way of NC 24/27 Highway, thence in a southerly direction along the eastern property lines of the properties having pin numbers 559500548819 and 559500547794 to the southeastern corner of the property having pin number 559500547794, thence in a westerly direction along the southern property line of the above property to the southwestern corner of the property having pin number 559500547794, thence in a southerly direction along the eastern property line of the property having pin number

559500546608 to the southeastern corner of the above said property, thence in an easterly direction along the property lines of the above said property and the property having pin number 559500549324 to the eastern corner of the property having pin number 559500549324, thence in a southwesterly direction along the southern property line of the above said property to the northeastern corner of the property having pin number 559500545073, thence in a southerly direction along the eastern property lines of the properties having pin numbers 559500545073, 559500535863, 559500545073, and 559500425859 to the southeastern corner of the property having pin number 559500425859, thence in an easterly direction along the northern property line of the property having pin number 559500527774 to the northeastern corner of the above said property, thence in a southerly direction along the eastern property lines of the properties having pin numbers 559500527774 and 559500620269 to the southeastern corner of the property having pin number 559500620269, thence in an easterly direction along the northern property line of the property having pin number 559500710159 to the northeastern corner of the above said property, thence in a southeasterly direction along the eastern property line of the above said property to the southeastern corner of the above said property, said corner being on the boundary of the northern right-of-way of Lakewood Road, thence in a northeasterly direction with the northern right-of-way of Lakewood Road to a point where the northerly extended eastern property line of the property having pin number 559500706769 intersects on the boundary of the northern right-of-way of Lakewood Road, thence in a southeasterly direction with the northerly extended eastern property line of the above said property to the northeastern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of Lakewood Road, thence in a southeasterly direction with the northeastern property line of the above said property to the southeastern corner of the above said property, thence in a westerly direction along the southern property lines of the properties having pin numbers 559500706769 and 559500704616 to the southwestern corner of the property having pin number 559500704616, thence in a northerly direction along the western property line of the above said property to the northwestern corner of the above said property, said corner also being located on the boundary of the southern right-of-way of Lakewood Road, said corner also being the point of beginning.

EXCEPTED from the above-described track are the following internal parcels:

(1) Property having pin number 559500553885.
(2) Property having pin number 559500561490.
(3) Property having pin number 559500552596.
(4) Property having pin number 559500476425.
(5) Property having pin number 559500475814.
(6) Property having pin number 559500470701.
(7) Property having pin number 559500611552.
(8) Property having pin number 559500612263.
(9) Property having pin number 559500614021.
(10) Those parcels of land in Arbor Heights subdivision, and road right-of-ways of Redwood Drive and Birchwood Court recorded in Plat Book

17 Page 386 and previously annexed into the town of Oakboro, NC. By parcels, these properties being identified by the following pin numbers.

(10.1) That property having pin number 659503418442
(10.2) That property having pin number 559503418373
(10.3) That property having pin number 559503419204
(10.4) That property having pin number 559503349155
(10.5) That property having pin number 559504510006
(10.6) That property having pin number 559504500948
(10.7) That property having pin number 559504500889
(10.8) That property having pin number 559504501820
(10.9) That property having pin number 559504501751
(10.10) That property having pin number 559504502740
(10.11) That property having pin number 559504504639
(10.12) That property having pin number 559504505639
(10.13) That property having pin number 559504506685
(10.14) That property having pin number 559504506851
(10.15) That property having pin number 559504505942
(10.16) That property having pin number 559504503889
(10.17) That property having pin number 559504514060
(10.18) That property having pin number 559504502986
(10.19) That property having pin number 559504515101
(10.20) That property having pin number 559504514210
(10.21) That property having pin number 559504512019
(10.22) That property having pin number 559504513108
(10.23) That property having pin number 559504511169
(10.24) That property having pin number 559504511218
(10.25) That property having pin number 559504511318
(10.26) That property having pin number 559504503740
(10.27) That drive by the name of Redwood
(10.28) That drive by the name of Birchwood

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body.** The governing body of the Town of Red Cross shall be the Town Council, which shall have four members and the Mayor.

"Section 3.2. **Temporary Officers.** Until the initial elections of 2003 provided for by Section 4.1 of this Charter, C. J. Barbee, Heath Hahn, J. D. Hinson, Raeford Quick, and Larry Wayne Smith are hereby appointed to the Town Council of the Town of Red Cross. They shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect a person from among the members of the temporary governing body to serve as interim mayor. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the regular municipal elections are held in 2003.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall be elected to four-year terms. In 2003, the two candidates receiving the highest number of votes shall be elected to four-year terms and the two candidates receiving the next highest number of votes shall be elected to two-year terms. In 2005, and quadrennially thereafter, two members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2003, and quadrennially thereafter, the Mayor shall be elected for a term of four years.

"Section 3.5. **Residence of Governing Body Members.** All members of the governing body of the Town of Red Cross, whether elected or appointed, must be qualified voters who reside within the corporate limits of the Town of Red Cross in order to qualify to take, hold, and continue in any such office.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Red Cross will operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

SECTION 2. From and after the effective date of this act, the citizens and property in the Town of Red Cross shall be subject to municipal taxes levied for the year beginning July 1, 2002, and for that purpose, the Town shall obtain from Stanly County a record of property in the area incorporated in Section 1 of this act that was listed for taxes as of January 1, 2002. The Town may adopt a budget ordinance for fiscal year 2002-2003 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2002-2003, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. If the effective date of incorporation is prior to July 1, 2002, the Town may adopt a budget ordinance for fiscal year 2001-2002 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1525

Committee Substitute Favorable 6/25/02

Short Title: Red Cross Charter. (Local)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF RED CROSS.

The General Assembly of North Carolina enacts:

SECTION 1. A Charter for the Town of Red Cross is enacted to read:

"CHARTER OF THE TOWN OF RED CROSS.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Red Cross are a body corporate and politic under the name 'Town of Red Cross'. The Town of Red Cross has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the town of Red Cross are as follows:

BEGINNING at the northwest corner of the property having pin number 559500704616, said point also being located in the southern right-of-way of Lakewood Road, thence from said point of beginning along the southern right-of-way of Lakewood Road in a southwesterly direction approximately 1263 feet to the intersect of the eastern right-of-way of NC 205 Highway and the southern right-of-way of Lakewood Road to a point, thence in a southerly direction with the eastern right-of-way of NC 205 Highway to the intersect of the eastern right-of-way of NC 205 Highway and the southern right-of-way of Hatley Burris Road to a point, thence in a southwesterly direction with the southern right-of-way of Hatley Burris Road to the westernmost corner of the property having pin number 559400585598, thence in a northeasterly direction to the northern most corner of the property having pin number 559400597149, thence in a northwesterly direction to the northwestern corner of the property having pin number 559400595534, thence in a northerly direction to the southeast corner of the property having pin number 559400591934, thence in a westerly direction to the southwest corner of above said property, thence in a southwesterly direction with the southern

right-of-way of Hilltop Road to the northeast corner of the property having pin number 559400499069, thence in a southerly direction to the northwest corner of the property having pin number 559400583812, thence in a southwesterly direction to the southern corner of the property having pin number 559400499069, thence in a southwesterly direction to the southeast corner of the above said property, thence in a northwesterly direction to the southwestern corner of above said property, thence in a northeasterly direction with above said property, thence in a northwesterly direction to the northwest corner of above said property, thence in a westerly direction with the right-of-way of Hilltop Road to the northeast corner of the property having pin number 559400492694, thence in a southerly direction to the northern corner of the property having pin number 559400483960, thence in a southeasterly direction to the eastern corner of the above said property, thence in a southwesterly direction to the southern corner of the property having pin number 559400481784, thence in a northwesterly direction to the extended northwest corner of the property having pin number 559400399466 and the northern right-of-way of Hilltop Road, thence in a northeasterly direction with the northern right-of-way of Hilltop Road to the southwestern corner of the property having pin number 559400492854, thence in a northerly direction to the northwest corner of the property having pin number 559500402236, thence in a westerly direction to the southwest corner of the property having pin number 559500402988, thence in a northerly direction to the southwest corner of the property having pin number 559500410214, thence in a westerly direction to the southwest corner of the above said property, thence in a northerly direction to the northwest corner of the above said property, thence with the southern right-of-way of Peachtree Road to the northeast corner of the property having pin number 559500313054, thence in a southerly direction to the southeast corner of the above said property, thence in a westerly direction to the western corner of the above said property, thence in a southwesterly direction to a corner of the property having pin number 559500216320, thence in a southwesterly direction to the southern corner of the property having pin number 559500106395, thence in a northerly direction to the southeast corner of the property having pin number 559500103284, thence in a southwesterly direction to the northeast corner of the property having pin number 559400099666, thence in a southeasterly direction to the extended southeastern corner of the property having pin number 559400190449 and the western right-of-way of Hilltop Road to a point, thence in a northwesterly direction with the western right-of-way of Hilltop Road to the extended northwestern corner of the property having pin number 559500002971 to a point, thence in a northeasterly direction to the northern corner of the above said property, thence in a southeasterly direction to the southeastern corner of the above said property, thence in an easterly direction to the northeastern corner of the property having pin number 559500006628, thence in a southerly direction to the southeast corner of the property having pin number 559500007506, thence in a northeasterly direction with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500100870, thence in a northeasterly direction to the northwestern corner of the above said property, thence in a southeasterly direction to the southeastern corner of the above said property, thence in an easterly direction with the northern right-of-way of

Peachtree Road to the southwestern corner of the property having pin number 559500113363, thence in a southeasterly direction with the northern property lines of the above said property and the property having pin number 559500115329 to the northeastern corner of the property having pin number 559500115329, thence in a southern direction with the property line of the above said property to a corner, thence in a southeasterly direction to the southeastern corner of the above said property, thence with the northwestern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500210443, thence to the northwestern corner of the above said property, thence in a northeasterly direction to the northern corner of the property having pin number 559500212612, thence in an easterly direction to the eastern corner of the above said property, thence with the northern right-of-way of Peachtree Road to the southwestern corner of the property having pin number 559500313054, thence in a northeasterly direction to the northwestern corner of the above said property, thence in an easterly direction to the corner of the property having pin number 559500412899, thence in a northerly direction to the northwestern corner of the above said property, thence in an easterly direction to a corner of the above said property, thence in a southerly direction with the above said property to a corner, thence in an easterly direction to the western corner of the property having pin number 559500513793, thence in a northeasterly direction to the northern corner of the above said property, thence with the western right-of-way of NC 205 Highway to the southeastern corner of the property having pin number 559500437527, thence in an westerly, and then southwesterly, direction with the property line of the above said property to the southwest corner of the above said property, thence in a northeasterly direction to the northwestern corner of the above said property, thence in a northerly direction to the northwestern corner of the property having pin number 559500433884, thence in an easterly direction to the northeastern corner of the above said property, thence in a generally westerly direction with the southern property line of the property having pin number 559500442720, thence in a westerly direction to a corner of the property having pin number 559500341479, thence in a southerly direction to the southeast corner of the above said property, thence in a northwesterly direction to the southwest corner of the above said property, thence in a northerly direction to a corner of the above said property, thence in an easterly direction to the southwestern corner of the above said property, thence in a westerly direction to the southeastern corner of the property having pin number 559500141931, thence in a southwesterly direction to the southern corner of the property having pin number 559500043112, thence in a southeasterly direction to the eastern corner of the property having pin number 559500043915, thence in a northwesterly direction with the southwestern property line of the above said property to the southeastern corner of the property having pin number 558500955410, thence in a westerly direction to the southwest corner of the property having pin number 558500856241, thence in a northerly direction to the southeastern corner of the property having pin number 558500748984, thence in a southeasterly direction to the southwestern corner of the above said property, thence with the eastern right-of-way of Pless Mill Road to the northern corner of the property having pin number 558500844115, thence in a southeasterly direction to the eastern corner of the

property having pin number 558500835789, thence in a southwesterly direction to the southern corner of the above said property, thence with the eastern right-of-way of Pless Mill and then Hilltop Road to the northwestern corner of the property having pin number 558500927048, thence in a northwesterly direction to the southwestern corner of the property having pin number 558500825910, thence in a northerly direction to the northwest corner of the above said property, thence in a northeasterly direction to the northern corner of the above said property, thence with the western right-of-way of Pless Mill Road to the southern corner of the property having pin number 558500840628, thence in a northwesterly direction to the extended right-of-way of the northwestern corner of the property having pin number 558500748984 and the northern right-of-way of NC 24/27 Highway to a point, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the intersect of the northern right-of-way of NC 24/27 Highway and the western right-of-way of Running Creek Church Road to a point, thence in a northerly direction with the western right-of-way of Running Creek Church Road and the northern right-of-way of Bethel Church Road, thence in an easterly direction with the northern right of way of Bethel Church to the southwestern corner of the property having pin number 558500873602, thence in a northerly direction to the northwestern corner of the property having pin number 558500874785, thence in an easterly direction to the northeastern corner of the above said property, thence in a northeasterly direction to the extended property line of the property having pin number 558500982395 and the northern right-of-way of Smith Grove Road, thence with the northern, and then eastern, right-of-way of Smith Grove Road to the extended right-of-way of Smith Grove Road and the southern right-of-way of Bethel Church Road to a point, thence in a westerly direction with the southern right-of-way of Bethel Church Road to the eastern corner of the property having pin number 558500875287, thence in a westerly direction to the northeastern corner of the property having pin number 558500856992, thence in a southerly direction to a corner of the above said property, thence in an easterly direction to a corner of the above said property, thence in a southerly direction to the southeastern corner of the above said property and the northern right-of-way of NC 24/27 Highway to a point, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 558500954995, thence in a northerly direction to the northwest corner of the above said property, thence in an easterly direction to the northeast corner of the above said property, thence in a southerly direction to the southeast corner of the property having pin number 558500956841 and the intersect of the northern right-of-way of NC 24/27 Highway to a point, thence with the northern right-of-way of NC 24/27 Highway to the intersect of the northern right-of-way of NC 24/27 Highway and the western right-of-way of Bethel Church Road to a point, thence with the northern right-of-way of Bethel Church Road and the extended corner of the property having pin number 559500056889 to a point, thence in a northeasterly direction to the northeastern corner of the above said property, thence in a southeastern direction to the southeastern corner of the property having pin number 559500058626 and the northern right-of-way of NC 24/27 Highway to a point, thence in a northeasterly direction to the northwestern corner of the above said property

to a corner, thence in a northeasterly direction to a corner of the above said property, thence in a southeasterly direction to the northeastern corner of the property having pin number 559500352901 and the western right-of-way of Smith Grove Road to a point, thence in a northerly direction with the western right-of-way of Smith Grove Road and the extended northwestern corner of the property having pin number 559500357853 to a point, thence in a southeasterly direction to the northeastern corner of the above said property, thence in a northeasterly direction to the northwestern corner of the property having pin number 559500355598, thence in a northwesterly direction to the southwestern corner of the property having pin number 559500464329, thence in a southerly direction with the eastern right-of-way of Smith Grove Road to the intersect of the eastern right-of-way of Smith Grove Road and the extended southeastern corner of the property having pin number 559500363695 to a point, thence in a northwesterly direction to the northwest corner of the above said property, thence in a northeasterly direction to the northern corner of the property having pin number 559500366724, thence in a southeasterly direction to the western most corner of the property having pin number 559500378012, thence in a northerly direction to a corner of the above said property, thence in an easterly direction to the extended northeast corner of the above said property and the eastern right-of-way of Smith Grove Road to a point, thence in a southerly direction with the eastern right-of-way of Smith Grove Road to the northwestern corner of the property having pin number 559500465989, thence in a northeastern direction to the northeastern corner of the above said property, thence in a southeastern direction to a corner of the above said property, thence in a northeastern direction to a corner of the above said property, thence in a northwesterly direction to the southern corner of the property having pin number 559500487387, thence in a northwesterly direction to the southeastern corner of the property having pin number 559500486524, thence in a southwesterly direction to the southwestern corner of above said property, thence in a northwesterly direction to the southeastern corner of the property having pin number 559500388126, thence in a southwesterly direction to the extended southwestern corner of the above said property and the western right-of-way of Smith Grove Road, thence in a northerly direction with the western right-of-way of Smith Grove Road to the northeast corner of the property having pin number 559500383023, thence in a northwesterly direction to the southeastern corner of the above said property, thence in a northwesterly direction to the southwestern corner of the property having pin number 559500382108, thence in a northeasterly direction to the southeastern corner of the property having pin number 559500380268, thence in a northeasterly direction to the extended northwestern corner of the above said property and the northern right-of-way of Smith Grove Road to a point, thence in an easterly direction with the northern right-of-way of Smith Grove Road to the westernmost corner of the property having pin number 559500388126, thence in an easterly direction to the extended northeast corner of the property having pin number 559500584879 and the eastern right-of-way of Jacob Road to a point, thence in a southeasterly direction with the eastern right-of-way of Jacob Road to the intersect of the eastern right-of-way of Jacob Road and the western right-of-way of Ridgecrest Road to a point, thence in an easterly direction to the northeastern corner of the property having pin number

559500678232, thence in a southeasterly direction to the easternmost corner of the property having pin number 559500761927, thence in a northeasterly direction with the western right-of-way of Gaddis Road to the extended northwestern corner of the property having pin number 559500765865 and the western right-of-way of Gaddis Road to a point, thence in a southeastern direction to the southeastern corner of the above said property, thence in a southwestern direction with the above said property line to the northeastern corner of the property having pin number 559500669099, thence in a southern direction to the northwestern corner of the property having pin number 559500756605, thence in an eastern direction to the southwestern corner of the property having pin number 559500850878, thence in a northern direction to the northwestern corner of the above said property, thence in an eastern direction to the northeast corner of the above said property, thence in a southern direction to the southeastern corner of the above said property, thence in an eastern direction to the southwestern corner of the property having pin number 559500952932, thence in a northern direction to the northwestern corner of the above said property, thence in an eastern direction to the northeastern corner of the above said property, thence in a southern direction to the southeastern corner of the above said property, thence in an eastern direction to the northeastern corner of the property having pin number 559500953703, thence in a southern direction to the intersect of the southeastern corner of the above said property and the northern right-of-way of NC 24/27 Highway, thence in an eastern direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 559500957855, thence in a northerly direction to the northern corner of the property having pin number 559500967325, thence in a southerly direction to the intersect of the southeastern corner of the property having pin number 559500957855 and the northern right-of-way of NC 24/27 Highway, thence in an easterly direction with the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 650500056704, thence in a northerly direction to the northwestern corner of the property having pin number 650500058931, thence in an easterly direction to the northeastern corner of the above said property, thence in a southerly direction to the intersect of the southeastern corner of the above said property and the northern right-of-way of NC 24/27 Highway to the southwestern corner of the property having pin number 650500262275, thence in a northerly direction to the northwestern corner of the above said property, thence in a generally easterly direction with the northern property line of the above said property to the northwestern corner of the property having pin number 650500265371, thence in a northeasterly direction to the northwestern most corner of the property having pin number 650500268540, thence in an eastern direction to the northeastern corner of the above said property, thence in a southeastern direction to the southeastern corner of the above said property, thence in an eastern direction to the corner of the property having pin number 650500360392, thence in a northern direction to the northwestern corner of the property having pin number 650500361593, thence in an eastern direction to the northeastern corner of the above said property, thence in a southern direction to the intersect of the extended southeastern corner of the above said property and the southern right-of-way of NC 24/27 Highway to a point, thence in a western direction with the

southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500351705, thence in a southerly direction to the southeastern corner of the above said property, thence in a westerly direction to the southwestern corner of the above said property, thence in a northerly direction to the northwestern corner of the above said property, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500254762, thence in a southerly direction to the southeastern corner of the above said property, thence in a westerly direction to the southwestern corner of the above said property, thence in a northerly direction to the northwestern corner of the above said property, thence in a westerly direction with the southern right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 650500159460, thence in a southerly direction to the southeastern corner of the above said property, thence in a western direction to the intersect of the property line of the property having pin number 650500151160 and the eastern right-of-way of Lakewood Road to a point, thence in a southerly direction with the eastern right-of-way of Lakewood Road to the intersect of the property line of the property having pin number 650500151160, thence in a southerly direction to the southeastern corner of the above said property, thence in a westerly direction to the northwestern corner of the property having pin number 650500045993, thence in southwesterly direction to the southeastern corner of the property having pin number 559500952193, thence in a northwesterly direction to the northeastern corner of the property having pin number 559500844105, thence in a westerly direction to the southwestern corner of the above said property, thence in a northerly direction to the northwestern corner of the above said property, thence in a westerly direction to the southwestern corner of the property having pin number 559500743314, thence in a northwesterly direction to the northwestern corner of the property having pin number 559500741963, thence in a westerly direction with the southern extended right-of-way of NC 24/27 Highway to the northeastern corner of the property having pin number 559500548819, thence in a southerly direction to the southeastern corner of the property having pin number 559500547794, thence in a westerly direction to the southwestern corner of the above said property, thence in a southern direction to the northwestern corner of the property having pin number 652700918836, thence in an easterly direction to the eastern corner of the above said property, thence in a southwesterly direction to the southwestern corner of the above said property, thence in a southern direction, following eastern property lines, to the southeastern corner of the property having pin number 559500425859, thence in an easterly direction to the northeastern corner of the property having pin number 559500527774, thence in a southern direction to the southeastern corner of the property having pin number 559500620269, thence in an easterly direction to the northeastern corner of the property having pin number 559500710159, thence in a southeasterly direction to the southeastern corner of the above said property and the northern right-of-way of Lakewood Road to a point, thence in an easterly direction with the northern right-of-way of Lakewood Road to the intersect of the northern right-of-way of Lakewood Road and the extended northeastern corner of the property having pin number 559500706769, thence in a southeasterly direction to the

southeastern corner of the above said property, thence in a westerly direction to the southwestern corner of the property having pin number 559500704616, thence in a northwesterly direction to the intersect of the northwestern corner of the above said property and the southern right-of-way of Lakewood Road to the point of beginning.

EXCEPTED from the above-described track are the following internal parcels:

(1) Property having pin number 559500553885.
(2) Property having pin number 559500561490.
(3) Property having pin number 559500552596.
(4) Property having pin number 559500476425.
(5) Property having pin number 559500475814.
(6) Property having pin number 559500470701.
(7) Property having pin number 559500611552.
(8) Property having pin number 559500612263.
(9) Property having pin number 559500614021.
(10) Those parcels of land in Arbor Heights subdivision, and road right-of-ways of Redwood Drive and Birchwood Court recorded in Plat Book 17 Page 386 and previously annexed into the town of Oakboro, NC.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of Governing Body.** The governing body of the Town of Red Cross shall be the Town Council, which shall have four members and the Mayor.

"Section 3.2. **Temporary Officers.** Until the initial elections of 2003 provided for by Section 4.1 of this Charter, C. J. Barbee, Heath Hahn, J. D. Hinson, Raeford Quick, and Larry Wayne Smith are hereby appointed to the Town Council of the Town of Red Cross. They shall possess and exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter. The temporary officers shall elect a person from among the members of the temporary governing body to serve as interim mayor. If any person named in this section is unable to serve, the remaining temporary officers shall, by majority vote, appoint a person to serve until the regular municipal elections are held in 2003.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall be elected to four-year terms. In 2003, the two candidates receiving the highest number of votes shall be elected to four-year terms and the two candidates receiving the next highest number of votes shall be elected to two-year terms. In 2005, and quadrennially thereafter, two members shall be elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office; Duties.** The qualified voters of the entire Town shall elect the Mayor. In 2003, and quadrennially thereafter, the Mayor shall be elected for a term of four years.

"Section 3.5. **Residence of Governing Body Members.** All members of the governing body of the Town of Red Cross, whether elected or appointed, must be qualified voters who reside within the corporate limits of the Town of Red Cross in order to qualify to take, hold, and continue in any such office.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Village to Operate Under Mayor-Council Plan.** The Town of Red Cross will operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

SECTION 2. From and after the effective date of this act, the citizens and property in the Town of Red Cross shall be subject to municipal taxes levied for the year beginning July 1, 2002, and for that purpose, the Town shall obtain from Stanly County a record of property in the area incorporated in Section 1 of this act that was listed for taxes as of January 1, 2002. The Town may adopt a budget ordinance for fiscal year 2002-2003 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2002-2003, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360. If the effective date of incorporation is prior to July 1, 2002, the Town may adopt a budget ordinance for fiscal year 2001-2002 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

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

HOUSE BILL 1525:
Red Cross Charter

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Representatives Barbee, Gibson, and Goodwin
Date:	July 3, 2002		
Version:	PCS for 2nd Edition	**Summary by:**	Trina Griffin* Committee Counsel

SUMMARY: ***This bill would incorporate the town of Red Cross and enact a charter to provide for its governance and to subject its residents to a municipal tax levied for the year beginning July 1, 2002. The Joint Legislative Commission on Municipal Incorporations recommended incorporation in June 2002. The House Local Government II committee has given House Bill 1525 a favorable report.***

The proposed committee substitute makes two technical changes: it revises the legal description and it changes the word "village" to the word "town" in Section 5.1 of the charter.

This act would be effective when it becomes law.

BILL ANALYSIS:

Section 1 would establish the Charter for the Town of Red Cross in Stanly County. The charter provides:

- A legal description of the property to be incorporated.
- For government by a four-member town council and mayor.
  - Appointment of named individuals in the bill as interim council members. These members shall choose an interim mayor. The interim mayor and council members shall serve until the 2003 municipal elections.
  - For municipal elections beginning in 2003, creating a staggered town council with all members being elected for four–year terms after staggering has been accomplished by the 2003 elections. Election of mayor for four-year terms beginning in 2003.
  - Qualification for serving as council member or mayor – qualified voter who resides within the town limits.
- For elections conducted on a nonpartisan basis determined by a plurality as provided in G.S. 163-292.
- For governmental operation under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of General Statutes.

Section 2 would subject persons and property within the town to municipal taxes levied for the year beginning July 1, 2002 and each year following. Authorizes the town to adopt a budget for fiscal year 2003-2003 without following the timetable of the Local Government Budget and Fiscal Control Act. Provides that the town may adopt a budget for the fiscal year 2001-2002 without following the timetable of the Local Government Budget and Fiscal Control Act if the effective date of incorporation is before July 1, 2002. In deviating from the timetable, the town must follow the sequence of actions in the spirit of the act insofar as practical.

*Frank Folger, counsel for House Local Government II, substantially contributed to this summary.

Fiscal Research Division Report on the Impact of Municipal Incorporations: Red Cross

1. Sales Tax Revenue Change:

Stanly County distributes sales tax revenues on a per capita basis. This analysis uses 2000-01 actual sales tax distribution to show how that distribution would have changed had Red Cross Creek been incorporated at that time.

Current

County	Municipalities	Population	% Population	Sales Tax Distribution
Stanly		56082	68.7%	**1,489,307**
	Albemarle	15781	19.3%	362,952
	Badin	1449	1.8%	30,232
	Locust	2466	3.0%	18,593
	New London	470	0.6%	2,153
	Norwood	2515	3.1%	56,523
	Oakboro	1386	1.7%	31,627
	Richfield	567	0.7%	4,397
	Stanfield	976	1.2%	11,994
	TOTAL	81692	100%	2,007,778

With Incorporation

County	Municipalities	Population	% Population	Sales Tax Distribution	Change
Stanly		56082	68.2%	1,369,366	(119,941)
	Albemarle	15781	19.2%	385,328	22,376
	Badin	1449	1.8%	35,381	5,149
	Locust	2466	3.0%	60,213	41,620
	New London	470	0.6%	11,476	9,323
	Norwood	2515	3.1%	61,409	4,887
	Oakboro	1386	1.7%	33,842	2,215
	Richfield	567	0.7%	13,845	9,447
	Stanfield	976	1.2%	23,831	11,837
	Red Cross	536	0.7%	13,088	(1,994,690)
	TOTAL	82228	100%	2,007,778	

2. Powell Bill Allocation Change

Annually state street aid or Powell Bill allocations are made to incorporated municipalities which establish their eligibility and qualify as provided by G.S. 136-41.1-.3. The amount allocated to each municipality is based on both population and qualifying street miles within the municipality.

FY 2001-02 population based allocations assumed a total, statewide municipal population of 4,086,685 and available funds of $101,578,822.46. This created a per capita distribution rate of $ 24.86.

Adding the new population of Red Cross (536) to the statewide total creates a new population of 4,087,221 and a per capita allocation of $24.853. The impact of this

change on Stanly municipalities is as follows:

Municipalities	Population	Current Allocation	Prospective Allocation	Change
Albemarle	311	7,730	7,729	(1)
Badin	1,157	28,758	28,755	(4)
Locust	2,435	60,524	60,517	(7)
New London	614	15,262	15,260	(2)
Norwood	2,222	55,230	55,223	(7)
Oakboro	1,201	29,852	29,848	(4)
Richfield	516	12,826	12,824	(2)
Stanfield	1,116	27,739	27,736	(3)
Red Cross	536	-	13,321	13,321
TOTAL		237,922	251,214	

3. Utility Excise Tax:

Of the 3.22% state excise tax rate on the in-state gross receipts of gas, power and light and telephone companies, 3.09 percentage points (or 96% of collections) are distributed to the respective municipalities within which these services took place. In 1998-99 the statewide total was $161.1 million.

Because Red Cross only incorporates new areas (areas not currently a part of another municipalities) no revenue shift is expected. Any revenue received by Swift Creek from this tax would be new or drawn from the NC General Fund.

4. Reimbursements:

Since 1979 the General Assembly has made several changes to tax law that impact local governments. The state's cities and counties have received reimbursements from the state for some of these losses, particularly as they relate to the sales and property tax bases. The state reimburses local governments for property tax losses related to the repeal of taxes on inventories and intangibles, as well as some of the losses associated with the homestead exemption. Locals also receive a reimbursement for sales taxes that are no longer paid on items purchased with food stamps. These reimbursements total to $333.4 million annually. When a new town incorporates some existing municipalities may see a small decline in their distributions, with a tiny amount redistributed to the new town. Fiscal Research is not in a position to estimate the exact impact of this change, although it should be minimal. These reimbursements to all communities will end June 30, 2003.

Note: Population numbers used for sales tax and Powell bill allocation vary due to the year of the estate used by the controlling agency.

Prepared by Linda Struyk Millsaps, Fiscal Research Division.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1684 A BILL TO BE ENTITLED AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

☐ 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 ☐ ☐.

☒ X 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1684
PROPOSED COMMITTEE SUBSTITUTE H1684-PCS4251-LA-72

Short Title: Thomasville Deannexation. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Thomasville:

BEGINNING at the centerline intersection of Hunt's Fork Creek and Hasty Creek; thence in a northern and eastern direction with the centerline of Hasty Creek approximately 940 feet to a point in the said creek centerline, said point being the northeast corner of Tax Lot 54A, Tax Map 322, said point also being in the western line of Tax Lot 22A; thence in a southern direction with the western line of Tax Lot 22A and the eastern line of Tax Lots 54A, 44, and 45 approximately 825 feet to a point on the southern side of Hunt's Fork Creek said point being the southeastern corner of Tax Lot 45 and the southeastern corner of Tax Lot 56 in the northern line of Tax Lot 7, Tax Map 324; thence in a western direction with the southern line of Tax Lot 56, Tax Map 322 and Tax Lot 54, Tax Map 322 and the northern line of Tax Lot 7, Tax Map 324 to a point, said point being the southwestern corner of Tax Lot 54, Tax Map 322 in the northern line of Tax Lot 7, Tax Map 324; thence in a northern direction with the western line of Tax Lot 54, Tax Map 322 approximately 110 feet to a point in the centerline of Hunt's Fork Creek; thence in an eastern direction with said creek approximately 445 feet to the point of beginning containing 4.42 acres more or less. Reference is made to plat recorded in Plat Book 35 Page 71 in the Office of the Register of Deeds of Davidson County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1684

Short Title:	Thomasville Deannexation.	(Local)
Sponsors:	Representatives Holliman and Dockham.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE CERTAIN DESCRIBED PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF THOMASVILLE.

The General Assembly of North Carolina enacts:

SECTION 1. The following described property is removed from the corporate limits of the City of Thomasville:

BEGINNING at the centerline intersection of Hunt's Fork Creek and Hasty Creek; thence in a northern and eastern direction with the centerline of Hasty Creek approximately 940 feet to a point in the said creek centerline, said point being the northeast corner of Tax Lot 54A, Tax Map 322, said point also being in the western line of Tax Lot 22A; thence in a southern direction with the western line of Tax Lot 22A and the eastern line of Tax Lots 54A, 44, and 45 approximately 825 feet to a point on the southern side of Hunt's Fork Creek said point being the southeastern corner of Tax Lot 45 and the southeastern corner of Tax Lot 56 in the northern line of Tax Lot 7, Tax Map 324; thence in a western direction with the southern line of Tax Lot 56, Tax Map 322 and Tax Lot 54, Tax Map 322 and the northern line of Tax Lot 7, Tax Map 324 to a point, said point being the southwestern corner of Tax Lot 54, Tax Map 322 in the northern line of Tax Lot 7, Tax Map 324; thence in a northern direction with the western line of Tax Lot 54, Tax Map 322 approximately 110 feet to a point in the centerline of Hunt's Fork Creek; thence in an eastern direction with said creek approximately 445 feet to the point of beginning containing 445 acres more or less.

Reference is made to plat recorded in Plat Book 35 Page 71 in the Office of the Register of Deeds of Davidson County.

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

HOUSE BILL 1684:
Thomasville Deannexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Holliman & Dockham
Date:	July 2, 2002	**Analysis by:**	Martha Walston Committee Counsel
Version:	Proposed Committee Substitute		

SUMMARY: House Bill 1684 is a local bill that removes certain described property from the corporate limits of the City of Thomasville in Davidson County. The proposed committee substitute corrects an error in the description set out in the First Edition of the Bill.

BILL ANALYSIS: The proposed committee substitute for House Bill 1684 removes certain described property containing 4.42 acres more or less from the City of Thomasville. According to the City Attorney, there is a wide creek that separates the property to be de-annexed from the other recently annexed property in Thomasville. In order to service the area, an investment in infrastructure would be necessary, specifically the construction of a bridge across the creek. Both the City and the residents of the area to be de-annexed have agreed to the de-annexation.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRGHT**
(Chair/Chairs) for the Committee on **FINANCE** .

☐ Committee Substitute for
H.B. 1629 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE CITY OF THOMASVILLE TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE.

☒ **X** 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE BILL 1629

Short Title: Thomasville Private Sale. (Local)

Sponsors: Representatives Holliman and Dockham.

Referred to: Finance.

June 12, 2002

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF THOMASVILLE TO CONVEY CERTAIN PROPERTY AT A PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Thomasville may convey by private negotiation and sale, with or without monetary consideration, any or all of its right, title, and interest in the following described property to the Central United Methodist Church of Thomasville under the terms and conditions that the City Council deem appropriate:

Lying and being in Thomasville Township, Davidson County, North Carolina, more particularly described as follows:

BEGINNING at a point in the south line of the property of the Central United Methodist Church as described in Deed Book 536 at Page 182, Davidson County Registry, the northwest corner of Tract 2 in the deed from Hi-Toms Broadcasting, Inc. to Radio Crusade Incorporated recorded in Deed Book 643 at Page 185, Davidson County Registry; said beginning point being located North 83° 17' 48" West 150.34 feet from an existing iron pipe at the southeast corner of the Central United Methodist Church property; thence from said beginning point along the south line of Central United Methodist Church North 83° 17' 48" West 150.40 feet to an existing iron pipe, corner with Thomasville Housing Authority; thence along the line of Thomasville Housing Authority North 83° 15' 39" West 344.39 feet to a new iron pipe; thence South 05° 36' 49" West 633.01 feet to a new iron pipe; thence South 86° 02' 37" East 525.14 feet to a point, the southwest corner of Tract 2 in the deed to Radio Crusade Incorporated recorded in Book 643, Page 185, Davidson County Register thence along the line of Radio Crusade incorporated North 02° 46' 08" East 608.9 feet to the point and place of Beginning, containing approximately 7.264 acres and being designated as Tract D on a survey by Davis-Martin-Powell & Associates, Inc. dated 6-4-85, Job No. S-21753.

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

HOUSE BILL 1629:
Thomasville Private Sale

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Holliman & Dockham
Date:	July 1, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1684 is a local bill that authorizes the City of Thomasville in Davidson County to convey certain described property by private sale to the Central United Methodist Church. The property to be conveyed contains approximately 7.264 acres.

CURRENT LAW: Article 12 of Chapter 160A of the General Statutes authorizes a city to dispose of real or personal property by private sale when certain requirements are met. A city may dispose of real property of any value and personal property valued at $30,000 or more for any one item or group of similar items by private negotiation and sale where (i) the real or personal property is significant for its architectural, archaeological, artistic, cultural or historical associations, or significant for its relationship to other property significant for architectural, archaeological, artistic, cultural or historical associations, or significant for its natural, scenic or open condition; and (ii) said real or personal property is to be sold to a nonprofit corporation or trust whose purposes include the preservation or conservation of real or personal properties of architectural, archaeological, artistic, cultural, historical, natural or scenic significance; and (iii) where a preservation agreement or conservation agreement is placed in the deed conveying the property from the city to the nonprofit corporation or trust.

Under G.S. 160A-267, when the city council proposes to dispose of property by private sale, it must adopt a resolution authorizing disposal of the property by private sale at a negotiated price. A notice summarizing the resolution must be published once after its adoption, and no sale may be held until 10 days after publication.

BILL ANALYSIS: House Bill 1629 authorizes the City of Thomasville to convey 7.624 acres of specifically described property to the Central United Methodist Church of Thomasville by private negotiation and sale, with or without monetary consideration. The resolution reads:

> WHEREAS, the property was donated to the City of Thomasville and has not been utilized by the city; that access to the property by the City would be difficult; that the property serves no useful purpose to the City; that Central United Methodist Church is a vital part of the community; that the church is in need of additional land in order to expand their ministry to members and surrounding community; and that it would be in the best interests of both the city and the residents that a local bill be ratified allowing the City of Thomasville to enter into a private sale, in a manner substantially the same as that set forth in N.C.G.S. § 160A-267, of real estate to Central Untied Methodist Church of Thomasville.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1690 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF CANDOR.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1690
PROPOSED COMMITTEE SUBSTITUTE H1690-PCS8348-LB-131

Short Title: Candor/Norwood Annexation. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF CANDOR, AND OTHER DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF NORWOOD.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Candor are increased by adding the following described area:

Beginning at a concrete monument in the north right-of-way of NC Highway 211, said monument being the southwest corner of H. David Bruton and wife Frieda Bryant Bruton as recorded in Deed Book 338, page 155 of the Montgomery County Registry, a corner with McNeill Sandhills Properties as recorded in Deed Book 224, page 433 of the Montgomery County Registry and NCSR 1573; running thence N 21 degrees 30 minutes 50 seconds W 233.70 feet with the west side of NCSR 1573; thence N 22 degrees 03 minutes 05 seconds W 162.05 feet; thence N 22 degrees 03 minutes 05 seconds W 60.95 feet; thence N 21 degrees 48 minutes 41 seconds W 108.11feet; thence N 21 degrees 51 minutes 25 seconds W 551.58 feet; thence N 21 degrees 47 minutes 15 seconds W 837.98 feet to a 2" iron pipe; thence N 69 degrees 13 minutes 21 seconds E 29.17 feet to a railroad spike in the center of NCSR 1573; thence N 21 degrees 53 minutes 53 seconds W 154.25 feet; thence N 22 degrees 56 minutes 49 seconds W 158.81 feet; thence N 23 degrees 01 minutes 27 seconds W 100.46 feet to a spike in the center of NCSR 1573; thence S 89 degrees 26 minutes 15 seconds E 2027.84 feet to a concrete monument on the west edge of NCSR 1508; thence S 03 degrees 48 minutes 42 seconds W 1670.15 feet to an existing iron pipe the northeast corner of the Montgomery County Water System tank property recorded in Deed Book 224 Page 577; thence along the east line of the Montgomery County Water System tank property S 03 degrees 48 minutes 42 seconds W 127.77 feet to an existing iron pin, the southeast corner of the Montgomery County Water System tank property; thence S 03 degrees 48 minutes 42 seconds W 88.66 feet to a spike in the center of N.C. Highway 211; thence

along the south line of Bruton S 68 degrees 02 minutes 01 seconds W 832.28 feet to a spike in the center of the road; thence a curve to the right with the following data: R=4200.17, A=252.39, D=3 degrees, 26 minutes, 35 seconds, chord bearing and distance S 69 degrees 45 minutes 19 seconds W 252.35 feet; thence N 21 degrees 30 minutes 50 seconds W 100.99 feet to the beginning containing 75.0 +/- acres including NC Highway 211, N.C.S.R. 1573, and N.C.S.R. 1508 rights-of-way and being the properties of H. David Bruton and wife Frieda Bryant Bruton, Montgomery County Water System, and the North Carolina Department of Transportation.

SECTION 2. The corporate limits of the Town of Norwood are increased by adding the following described area:

AREA 1 – TOWN PARK AREA

The Town Park Area encompasses that 16.24 acre tract owned by the Town of Norwood located northeast of the intersection of North Main Street (US 52) and Stanly School Road adjoining the Town of Norwood, Stanly County, North Carolina and is more fully described as follows:

BEGINNING AT A CORNER on the existing municipal boundary line for the Town of Norwood as described in House Bill 800 - Chapter 468 of the 1991 Session of the North Carolina General Assembly which was ratified July 1, 1991, said corner being the easternmost corner of Tax Record Lot 14932 and being located North 60-56-52 East 1734.25 feet from the centerline intersection of Mary – Branch Road and North Main Street (US 52) in the Town of Norwood, Stanly County, North Carolina; thence southerly with said municipal boundary and the eastern boundaries for Tax Record Lot 4981 the following calls: South 47-12-26 East 10.10 feet, South 47-08-55 East 157.65 feet, South 29-07-23 West 492.50 feet, South 18-13-45 West 1067.41 feet, South 38-28-24 West 41.99 feet, South 37-38-15 West 38.28 feet, and South 39-48-20 West 23.43 feet to the southernmost corner for Tax Record Lot 4981, said corner being on the northern right of way for North Main Street (US 52); thence westerly continuing with the northern right of way for North Main Street (US 52) and said municipal boundary North 51-57-31 West 492.81 feet to the westernmost corner for Tax Record Lot 4981; thence northerly leaving the northern right of way for North Main Street (US 52) and following the western boundary for Tax Record Lot 4981 and said existing municipal boundary North 31-03-32 East 135.92 feet to the westernmost corner for Tax Record Lot 22723, said comer being on said existing municipal boundary; thence northerly leaving said existing municipal boundary and following the northern and western boundaries for Tax Record Lot 4981 the following calls: North 31-04-08 East 12.11 feet, North 31-01-48 East 130.70 feet, North 31-02-03 East 157.11 feet, North 35-49-50 West 61.28 feet, North 35-53-37 West 141.57 feet, North 43-18-10 East 7.47 feet, North 43-19-59 East 139.71 feet, North 36-20-35 East 268.93 feet, North 36-17-26 East 170.43 feet, North 37-06-11 East 46.03 feet, North 36-32-31 East 250.62 feet, North 37-19-43 East 97.95 feet, North 37-06-21 East 150.84 feet, and South 47-33-07 East

147.36 feet, to the POINT OF BEGINNING. The tract described above encompasses 16.24 acres more or less.

AREA 2 - ANCHOR ROAD AREA

The Anchor Road Area encompasses all (100.319 acres) of the unincorporated tracts south of properties fronting Island Cove Road, east of Oak Road, north of parcels fronting the northern portion of Acorn Acres Road, and west of Lake Tillery adjoining the town of Norwood, Stanly County, North Carolina and is more fully described as follows:

BEGINNING AT A CORNER on the existing municipal boundary line for the Town of Norwood as described in Ordinance No. 87 entitled Annexation Area 98-A which was adopted on February 2, 1998, and recorded in Deed Book 667 at Page 976 of the Stanly County Register of Deeds Office, said corner being on the eastern right of way for Anchor Road and being located South 08-22-16 West 376.12 feet from the centerline intersection of Anchor Road and Island Cove Road in the Town of Norwood, Stanly County, North Carolina; thence leaving said municipal boundary and following the eastern right of way for Anchor Road South 42-16-35 West 17.49 feet to the westernmost corner of Tax Record Lot 12095; thence southerly following the boundaries for Tax Record Lots 12905, 13017, 2629, 9270, 17630, 29626, 11682, 14401, 12526, 28823, 28822, 13591, 14542, 32565, 926, 4775, 6722, and 11733 as they front the western boundary for Lake Tillery the following calls: South 61-19-07 East 12.92 feet, South 61-19-07 East 120.18 feet, South 59-18-38 East 88.05 feet, South 83-41-13 East 87.65 feet, North 69-08-48 East 7.35 feet, North 69-09-03 East 17.11 feet, South 74-57-12 East 53.59 feet, South 74-57-22 East 12.59 feet, South 41-32-28 East 39.87 feet, South 25-30-39 East 43.34 feet, South 02-01-15 East 69.56 feet, South 19-32-52 West 81.81 feet, South 61-50-31 West 48.94 feet, South 27-15-29 West 96.07 feet, South 28-29-32 East 14.31 feet, South 28-29-31 East 59.74 feet, South 56-09-07 East 73.48 feet, South 56-09-07 East 42.73 feet, South 36-43-24 East 32.13 feet, South 10-33-49 West 90.96 feet, South 10-33-47 West 27.24 feet, South11-49-01 West 33.98 feet, South 11-48-55 West 26.99 feet, South 49-53-48 West 67.62 feet, South 52-50-24 West 16.15 feet, South 52-50-24 West 16.27 feet, South 51-31-14 West 122.40 feet, South 51-31-16 West 123.12 feet, South 51-31-16 West 16.22 feet, South 53-36-17 West 7.92 feet, South 84-46-51 West 103.03 feet, South 84-46-19 West 114.26 feet, South 84-45-53 West 48.32 feet, South 61-11-33 West 68.60 feet, South 60-46-53 West 91.78 feet, South 84-44-45 West 27.81 feet, South 84-11-37 West 57.52 feet, South 84-04-38 West 66.63 feet, South 27-51-19 East 32.50 feet, South 67-15-07 East 134-58 feet, and South 36-03-01 East 102.08 feet to the easternmost corner for Tax Record Lot 11733, said corner being on the western boundary for Lake Tillery and on the existing municipal boundary line for the Town of Norwood as described in Ordinance No. 88 entitled Annexation Area 98-B which was adopted on February 2, 1998, and recorded in Deed Book 667 at Page 983 of the Stanly County Register of Deeds Office; thence westerly with said municipal boundary the following calls: South 77-06-58 West 35.69

feet, North 73-21-53 West 29.61 feet, South 45-50-34 West 151.52 feet, South 47-30-26 West 16.25 feet, South 17-53-32 West 242.26 feet, South 35-34-44 West 132.50 feet, South 35-28-51 West 24.34 feet, South 35-28-55 West 13.36 feet, South 35-39-06 West 0.18 feet, South 35-43-54 West 207.54 feet, North 69-16-36 West 5.38 feet, North 69-15-01 West 12.29 feet, North 69-27-36 West 10.17 feet, North 69-27-34 West 58.22 feet, North 69-36-28 West 77.16 feet, North 68-12-40 West 77.75 feet, North 68-17-53 West 18.79 feet, North 68-17-52 West 78.11 feet, North 66-49-27 West 59.64 feet, North 67-42-38 West 5.01 feet, South 69-38-55 West 234.76 feet, South 74-17-21 West 197.76 feet, South 76-02-35 West 205.44 feet, North 05-48-08 West 105.10 feet, and South 83-50-12 West 196.76 feet to a corner on the existing municipal boundary for the Town of Norwood as described in House Bill 800 - Chapter 468 of the 1991 Session of the North Carolina General Assembly which was ratified July 1, 1991, said corner being the northwestern comer for Tax Record Lot 32621 and on the eastern right of way for Oak Road; thence northerly with said existing municipal boundary and the eastern right of way for Oak Road the following calls: North 08-09-33 West 155.44 feet, North 08-09-32 West 279.52 feet, North 08-09-33 West 58.02 feet, North 01-44-40 East 193.57 feet, North 08-36-53 West 198.59 feet, North 06-26-45 West 109.09 feet, North 10-19-19 West 101.16 feet, North 19-20-23 West 237.79 feet, North 20-35-22 West 90.64 feet, North 20-32-59 West 107.19 feet, and North 20-58-01 West 43.31 feet to the easternmost corner for Tax Record Lot 4785, said corner being a corner on the existing municipal boundary line for the Town of Norwood as described in an annexation ordinance entitled Annexation Area 98-A (see above for reference); thence easterly with said existing municipal boundary the following calls: North 45-54-36 East 199.97 feet, North 45-46-31 East 357.41 feet, North 45-35-57 East 371.08 feet, North 45-35-57 East 11.21 feet, South 70-40-27 East 9.26 feet, South 65-12-44 East 21.34 feet, South 61-31-59 East 17.77 feet, South 65-40-46 East 19.48 feet, South 61-58-30 East 20.96 feet, South 58-12-37 East 34.12 feet, South 58-12-37 East 39.85 feet, South 59-53-19 East 88.14 feet, North 33-16-25 East 109.36 feet, North 33-51-48 East 100.75 feet, North 33-51-48 East 218.59 feet, North 31-34-09 East 180.62 feet, North 80-42-28 East 49.01 feet, North 81-00-11 East 27.68 feet, South 63-38-23 East 79.36 feet, South 62-43-23 East 33.27 feet, South 62-43-20 East 16.43 feet, South 54-42-50 East 23.20 feet, South 54-23-54 East 88.58 feet, South 54-57-24 East 30.61 feet, South 56-12-18 East 14.01 feet, South 56-12-15 East 25.21 feet, South 71-45-25 East 56.02 feet, South 71-41-55 East 56.89 feet, South 71-51-59 East 12.03 feet, and South 25-53-25 East 49.17 feet, South 25-24-35 East 109.47 feet, South 25-30-05 East 59.87 feet, South 71-47-10 East 58.70 feet, South 71-31-27 East 99.16 feet, South 37-20-15 East 74.02 feet, South 37-18-57 East 141.77 feet, South 37-18-52 East 11.14 feet, South 60-47-35 East 32.33 feet, South 60-47-28 East 35.03 feet, South 60-47-34 East 16.92 feet, and South 82-00-59 East 60.70 feet to the POINT OF BEGINNING. The tract described above encompasses 100.319 acres more or less.

SECTION 3. This act is effective when it becomes law. Territory annexed by this act is subject to taxation in the initial year as provided by the rules under G.S. 160A-58.10.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1690

Short Title:	Candor Annexation.	(Local)
Sponsors:	Representative Gibson.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF CANDOR.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Candor are increased by adding the following described area:

Beginning at a concrete monument in the north right-of-way of NC Highway 211, said monument being the southwest corner of H. David Bruton and wife Frieda Bryant Bruton as recorded in Deed Book 338, page 155 of the Montgomery County Registry, a corner with McNeill Sandhills Properties as recorded in Deed Book 224, page 433 of the Montgomery County Registry and NCSR 1573; running thence N 21 degrees 30 minutes 50 seconds W 233.70 feet with the west side of NCSR 1573; thence N 22 degrees 03 minutes 05 seconds W 162.05 feet; thence N 22 degrees 03 minutes 05 seconds W 60.95 feet; thence N 21 degrees 48 minutes 41 seconds W 108.11feet; thence N 21 degrees 51 minutes 25 seconds W 551.58 feet; thence N 21 degrees 47 minutes 15 seconds W 837.98 feet to a 2" iron pipe; thence N 69 degrees 13 minutes 21 seconds E 29.17 feet to a railroad spike in the center of NCSR 1573; thence N 21 degrees 53 minutes 53 seconds W 154.25 feet; thence N 22 degrees 56 minutes 49 seconds W 158.81 feet; thence N 23 degrees 01 minutes 27 seconds W 100.46 feet to a spike in the center of NCSR 1573; thence S 89 degrees 26 minutes 15 seconds E 2027.84 feet to a concrete monument on the west edge of NCSR 1508; thence S 03 degrees 48 minutes 42 seconds W 1670.15 feet to an existing iron pipe the northeast corner of the Montgomery County Water System tank property recorded in Deed Book 224 Page 577; thence along the east line of the Montgomery County Water System tank property S 03 degrees 48 minutes 42 seconds W 127.77 feet to an existing iron pin, the southeast corner of the Montgomery County Water System tank property; thence S 03 degrees 48 minutes 42 seconds W 88.66 feet to a spike in the center of N.C. Highway 211; thence along the south line of Bruton S 68 degrees 02 minutes 01 seconds W 832.28 feet to a spike in the center of the road; thence a curve to the right with the following data:

R=4200.17, A=252.39, D=3 degrees, 26 minutes, 35 seconds, chord bearing and distance S 69 degrees 45 minutes 19 seconds W 252.35 feet; thence N 21 degrees 30 minutes 50 seconds W 100.99 feet to the beginning containing 75.0 +/- acres including NC Highway 211, N.C.S.R. 1573, and N.C.S.R. 1508 rights-of-way and being the properties of H. David Bruton and wife Frieda Bryant Bruton, Montgomery County Water System, and the North Carolina Department of Transportation.

SECTION 2. This act becomes effective June 30, 2002.

HOUSE BILL 1690:
Candor/Norwood Annexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Gibson
Date:	July 3, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel

SUMMARY: ***House Bill 1690 annexes a 75-acre piece of undeveloped land currently owned by one property owner to the Town of Candor. The proposed committee substitute adds a provision that would also annex a park owned by the Town of Norwood and a 100-acre residential tract surrounded by the city limits to the Town of Norwood.***

The act would be effective when it becomes law.

CURRENT LAW: Annexation is one method that a town may employ to extend its corporate limits, and the process must be done in accordance with Article 4A of Chapter 160A. Annexation may be either voluntary or involuntary. A voluntary annexation requires that the governing board of a municipality pass an ordinance upon presentation of a petition signed by the owners of all real property within the area to be annexed. An involuntary annexation requires, among other things, that the property meet certain characteristics:

- The area proposed to be annexed must be adjacent or contiguous to the municipality's boundaries;
- At least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary; and
- No part of the area may be included within the boundary of another incorporated municipality.

In addition to the requirements concerning location of the area in relation to the municipality's existing boundaries, the area must also be "developed for urban purposes" by meeting one of several standards concerning population, density, and development.

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS:

Section 1 of the bill would annex a 75-acre tract of undeveloped land, currently owned by one property owner, to the Town of Candor without the town having to meet the statutory requirements for annexation.

Section 2 of the bill would annex two separate areas to the Town of Norwood. The first area is the "Town Park Area" and consists of approximately 16 acres of land currently owned by the Town of Norwood. The second area is the "Anchor Road Area" and consists of approximately 100 acres of land with approximately 15 property owners. The Town is requesting annexation because the property does not meet the statutory requirements for annexation.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1568 A BILL TO BE ENTITLED AN ACT TO AMEND THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1568

Committee Substitute Favorable 6/25/02

Short Title: Sedimentation Act Amendments. (Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 113A-54.1 is amended by adding a new subsection to read:

"(e) An approved erosion and sedimentation control plan shall contain a schedule for the inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person submitting the erosion and sedimentation control plan or an agent of the person submitting the erosion and sedimentation control plan shall perform each inspection. The person who performs each inspection shall post a record of the inspection on the site of the land-disturbing activity. The record shall certify that the work has been completed in accordance with the approved erosion and sedimentation control plan and is being maintained in a manner that satisfies the requirements of this Article. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1."

SECTION 2. G.S. 113A-54.2(a) reads as rewritten:

"(a) The fee for the review of an erosion and sedimentation control plan and related compliance activities shall be one hundred fifty dollars ($150.00) per acre of disturbed land as shown on an erosion and sedimentation control plan or of land disturbed during the life of the project, whichever is greater. ~~The Commission may establish a fee schedule for the review and approval of erosion control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. An application fee may not exceed fifty dollars ($50.00) per acre of disturbed land shown on an erosion control plan or of land actually disturbed during the life of the project.~~"

SECTION 3. G.S. 113A-56 reads as rewritten:

"**§ 113A-56. Jurisdiction of the Commission.**

(a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that ~~are:~~ are any of the following:

(1) Conducted by the ~~State;~~ State.

(2) Conducted by the United ~~States;~~ States.

(3) Conducted by persons having the power of eminent ~~domain;~~ domain other than a local government.

~~(4) Conducted by local governments; or~~

(5) Funded in whole or in part by the State or the United States.

(b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if such program has been approved by the Commission as being in conformity with the general State program.

(c) The Commission shall have concurrent jurisdiction with local governments that have an approved erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to an approved erosion and sedimentation control program:

(1) To review an erosion and sedimentation control plan approved by an approved erosion and sedimentation control program and to require a revised plan if the Commission determines that the plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.

(2) To take inspection and enforcement action if the Commission determines that the local government has failed to take appropriate inspection or enforcement action."

SECTION 4. G.S. 113A-57 reads as rewritten:

"**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout

waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle ~~which~~ that can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within ~~15~~ 10 working days or ~~30~~ 21 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install ~~such~~ erosion and sedimentation ~~and erosion~~ control devices and practices ~~as~~ that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract ~~if more than one acre is to be uncovered~~ unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

SECTION 5. G.S. 113A-60 reads as rewritten:

"**§ 113A-60. Local erosion and sedimentation control programs.**

(a) ~~Any~~ A local government may submit to the Commission for its approval an erosion and ~~sediment~~ sedimentation control program for its jurisdiction, and to this end local governments are authorized to adopt ordinances and regulations necessary to establish and enforce erosion and ~~sediment~~ sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related compliance activities. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. An ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article. Two or more units of local government are authorized to establish a joint program and to enter into any agreements

that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

(b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

(c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and ~~sediment~~ sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

(d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for administering all components of the erosion and sedimentation control program other than the inspection of land-disturbing activities. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. A local government that administers a limited erosion and sedimentation control program shall pay an amount equal to one hundred twenty dollars ($120.00) per acre of disturbed land subject to inspection under the limited erosion and sedimentation control program to the Department for review of each erosion and sedimentation control plan and related compliance activities. Fees paid to the Department by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). The local government shall establish a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be the amount that the local government is required to pay to the Department under this subsection for review of the erosion and sedimentation control plan and related compliance activities. In addition, the fee may include the amount that is required to cover the cost of inspection activities conducted by the local government. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. An ordinance adopted by a local government that establishes a limited program shall at least meet and may exceed the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited

program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs."

SECTION 6. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. –

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars ~~($5,000).~~ ($5,000), except that, in order to deter violations, the Secretary may assess a civil penalty of up to ten thousand dollars ($10,000) for the first day of a violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) The Secretary or a local government that administers an erosion and ~~sediment~~ sedimentation control program approved under ~~G.S. 113A-60~~ G.S. 113A-60(a) shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the

prior record of the violator in complying or failing to comply with this Article.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

SECTION 7. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"**§ 113A-67. Annual report.**

The Department of Environment and Natural Resources shall report to the Environmental Review Commission on the implementation of this Article on or before September 1 of each year. The Department shall include in the report an analysis of how well the implementation of the Sedimentation Pollution Control Act of 1973 is preventing the sedimentation of streams, rivers, lakes, and other waters of the State. The report shall also include an evaluation of whether the fees and civil penalties are adequate to properly administer and enforce this Article. In addition, the report shall include a review of the effectiveness of local erosion and sedimentation control programs."

SECTION 8. The Department of Environment and Natural Resources shall submit the first report required by G.S. 113A-67, as enacted by Section 7 of this act, to the Environmental Review Commission on or before 1 September 2003.

SECTION 9. This act becomes effective 1 August 2002.

HOUSE BILL 1568:
Sedimentation Act Amendments

BILL ANALYSIS

Committee: House Finance
Date: July 2, 2002
Version: 2nd Edition

Introduced by: Reps. Weiss and Hackney
Summary by: Rick Zechini
Staff Attorney

SUMMARY: ***House Bill 1568 requires the self-inspection of an area covered by an approved erosion and sedimentation control plan; raises the fee for the review of an erosion and sedimentation control plan to $150 per acre from a maximum of $50 per acre; allows a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by that local government; requires exposed slopes to be planted or provided with ground cover within 10 working days or 21 calendar days, whichever is shorter, of completion of any phase of grading; authorizes a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities within the jurisdiction; provides that a civil penalty of $10,000 may be assessed for the first day of a violation; and requires the Department of Environment and Natural Resources to report on the implementation of the Sedimentation Pollution Control Act of 1973. House Bill 1568 was recommended by the Environmental Review Commission.***

CURRENT LAW: The General Assembly enacted the Sedimentation Pollution Control Act of 1973 (Act) to establish a program to allow development while minimizing the detrimental effects from pollution by sedimentation. The Act provides that certain land-disturbing activity is subject to mandatory requirements and the Act is enforceable by means of civil penalties, criminal penalties, stop-work orders, injunctive relief, and civil relief. The Act requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to have an erosion and sedimentation control plan (plan) approved by the North Carolina Sedimentation Control Commission (Commission), which has delegated this authority to the Division of Land Resources in the Department of Environment and Natural Resources, prior to initiating the activity. In addition, the Act requires the utilization of sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the construction within the boundaries of the tract during construction and provide for permanent ground cover after completion of construction. A local government may establish its own erosion and sedimentation control program to approve plans and enforce the Act upon a determination by the Commission that the local program has standards that equal or exceed those of the Act. A local government that establishes its own program also sets its own fees.

BILL ANALYSIS:

Section 1. Self-Inspections

Section 1 of HB 1568 requires a plan to include a schedule for the self-inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary groundcover. The person who submits the plan, or their agent, shall perform each inspection and post a record of each inspection on site that certifies that the work at the site has been completed and maintained in accordance with the approved plan and the Act.

Section 2. Fee for Plan Review and Related Compliance Activities

Section 2 raises the fee for the review of a plan and related compliance activities to $150 per acre of disturbed land. Current law authorizes the Commission to establish a fee schedule with a fee not to exceed $50 per acre of disturbed land.

Section 3. Jurisdiction

Section 3 allows a local government with an approved plan to regulate land-disturbing activities conducted by that local government. This section also clarifies that the Commission, by delegation the Division of Land Resources in the Department of Environment and Natural Resources (DENR), has concurrent jurisdiction with local governments that have approved erosion and sedimentation programs.

Section 4. Ground Cover on Exposed Slopes

Section 4 provides that exposed slopes must be planted or provided with ground cover within 10 working days or 21 calendar days, whichever period is shorter, of completion of any phase of grading.

Section 5. Limited Local Sedimentation and Erosion Control Programs

Section 5 authorizes a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing activities if the Commission determines that the program has standards that equal or exceed those of the Act. If the Commission approves a limited local program, the Commission will retain responsibility for approval of plans and enforcement. The local government will establish a fee for the review of a plan and related compliance activities and is required to submit an amount equal to $120 per acre of land disturbed to DENR to compensate DENR for the costs associated with the review of plans and related compliance activities.

This section also clarifies that as a part of a local government's sedimentation and erosion control program it may adopt an ordinance that establishes a fee for the review of plans and related compliance activities.

Section 6. Civil Penalty

Section 6 authorizes the Secretary of Environment and Natural Resources, in order to deter violations of the Act, to assess a civil penalty of up to $10,000 for the first day of a violation. Current law provides that a $5,000 penalty may be assessed for the first day of a violation and the violator is given a date by which compliance is required. If the violation is not corrected by the stated date, then there is a continuing violation subject to a $5,000 civil penalty per day. The changes contained in Section 6 would allow a one-time civil penalty of up to $10,000 for the initial violation and a civil penalty of $5,000 for each additional violation.

Sections 7 and 8. Annual Reporting Requirement

Section 7 requires DENR to report to the Environmental Review Commission by September 1 of each year on the implementation of the Act, the adequacy of the fees and civil penalties, and the effectiveness of local programs. Section 8 provides that the first report is due September 1, 2003.

Section 9. Effective Date

Section 9 provides that the act becomes effective August 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1568 (2 Edition)

SHORT TITLE: Sedimentation Act Amendments

SPONSOR(S): Representatives Weiss and Hackney

FISCAL IMPACT

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

(in millions)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Sedimentation Acct.	$2.87	$3.06	$3.00	$2.94	$2.88
Local Governments	**No Estimate Available – See Assumptions and Methodology**				
EXPENDITURES					
Division of Land Resources	$2.87	$3.06	$3.00	$2.94	$2.88
Local Governments	**No Estimate Available – See Assumptions and Methodology**				
POSITIONS	20	20	17		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resource's Division of Land Resources and local governments.

EFFECTIVE DATE: August 1, 2002

BILL SUMMARY: The Committee Substitute for HB 1568 amends the Sedimentation Pollution Control Act of 1973. The bill requires the self-inspection of an area covered by an approved erosion and sedimentation control plan; raises the fee for the review of an erosion and sedimentation control plan to $150 per acre from a maximum of $50 per acre; allows a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by the local government; requires exposed slopes to be planted or provided with ground cover within 10 working days or 21 calendar days, whichever is shorter, of completion of any phase of grading; authorizes a local government to establish an erosion and sedimentation control program that is limited to the inspection of land-disturbing within the jurisdiction; requires local governments with an approved limited local program to submit an amount equal to $120 per acre of land disturbed to the Department of Environment and Natural Resources (DENR) for the costs associated with the review of the erosion and sedimentation control plans and related compliance activities; provides that a civil penalty of $10,000 may be assessed for the first day of a violation; and requires DENR to report on the implementation of the Sedimentation Pollution Control Act of 1973.[1]

[1] Summary by Rick Zechini, Counsel to the House Environment and Natural Resources Committee, June 25, 2001.

ASSUMPTIONS AND METHODOLOGY:

Revenues:

All revenues generated by the fee increase will be placed in the Division of Land Resources (DLR) Sedimentation Account, thus the bill will have no fiscal impact on the General Fund. As required by statute (G.S. 113 A-54.2(b)) all funds would be applied to the costs of administering the Sedimentation Act.

According to data from DLR, the number of acres associated with sedimentation and erosion control plans reviewed annually has decreased approximately 8% in recent years. This reduction is due in part to the turndown of the construction industry, the reduction of good acreage in the state to develop, and the reality of more local governments taking responsibility for their own plans and inspections. Data from the two most recent years indicate that the number of acres covered by the sedimentation plans have stabilized at approximately 29,000 acres per year.

Forty-five (45) local governments presently have an erosion and sedimentation control ordinance. Two or three local government programs have been approved per year on average for the past several years. Fiscal Research and DLR estimate that the legislation will generate a small increase in the number of local government erosion and sedimentation control program requests, for a total of 1-2 local government programs per year with limited authority and 3-4 per year with full authority. It is estimated that the total acreage inspected by DLR annually will be reduced by 2% as a result from more local governments taking ownership of their own programs.

	2002-03	2003-04	2004-05	2005-06	2006-07
Estimated number of plans reviewed:	2,988	2,928	2,870	2,812	2,756
Estimated number of acres:	28,456	27,887	27,329	26,783	26,247
Total revenue generated at $40/acre	$1,138,240	$1,115,475	$1,093,165	$1,071,302	$1,049,876
Total revenue generated at $150/acre	$4,007,552	$4,183,031	$4,099,370	$4,017,383	$3,937,035
Difference (or additional revenue generated by the bill)	$2,869,313	$3,067,556	$3,006,205	$2,946,081	$2,887,159

The fiscal impact is estimated based on the total number of acres inspected by DLR. The bill sets the per acre fee at $150, an increase of $110 over the current rate of $40 per acre. The additional revenue by this bill is the difference in revenue generated between the current $40 fee and the proposed $150 fee. Fiscal year 2002-03 is adjusted for the August 1 implementation date. One month's fees will be collected at the $40 rate, while the remainder of the year will use the new $150 rate.

Expenditures

As required by statute (G.S.113A-54.2(b)), sedimentation and erosion control fees collected by the Department are deposited in a special fund, the Sedimentation Account, and must be spent for the costs of administering the Sedimentation Act. Since the bill does not impose new requirements on the Department, the increased revenue will be used to expand program resources. According to the Department, most of the additional revenue would be used to create field office positions for technicians, environmental specialists and environmental

engineers in the seven regional offices and an Assistant Sedimentation Specialist position in the central office. These new positions would be used for the following purposes:

- Promote additional local government erosion and sedimentation control programs,
- Provide performance audits of local erosion and sedimentation control programs to insure local programs meet State standards for implementation,
- Train both State and local program staff,
- Provide additional technical assistance and training for the regulated community, and
- Provide for consistent enforcement across the State by increasing the frequency of state compliance inspections from once every 4.5 months on average to once every 2.3 months on average.

In addition to the technical staff, the Department proposes to hire additional administrative staff in the regional offices and the central office. The Department also anticipates an increase in enforcement efforts resulting from the increase in the frequency of the inspections. As a result, they plan to use some of the revenue to support additional positions in the Attorney General's Office.

The actual number of new staff hired depends on the amount of new revenue generated. Using an average cost of $50,000 per position including salary, benefits and operating support, the Department could hire up to 57 new positions in FY 2002-03. Logistically, only a limited number of qualified staff could be recruited, hired and trained within a year. Consequently, this fiscal note assumes that approximately 20 new employees would be hired in each of the next three fiscal years. During this hiring process, revenues will continue to be deposited to the Sedimentation Account, where they remain in the cash balance. The size of the cash balance depends on how quickly the Department hires the additional employees.

Alternatively, the General Assembly could choose to cut $2.47 million from the Division of Land Resource's General Fund appropriation for the Sedimentation and Erosion Control Program and direct the Department to fund shift all the General Fund positions and operating support to the new revenues. This action would help reduce the size of the cash balance in the Sedimentation Account as well as limit the number of new employees the Division could hire.

Local Government Impact

This bill does not place any new requirements on local governments. It does allow a local government with an approved erosion and sedimentation control program to regulate land-disturbing activities conducted by that local government. It also authorizes local governments to establish a "limited" erosion and sedimentation control program that is limited to the *inspection* of the land-disturbing activities. The Division of Land Resources still retains the responsibility for approval of plans and enforcement. If local government chooses to establish a limited program, the bill requires the local government to establish a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The local government in turn is required to pay an amount equal to $120

per acre of land disturbed to the Department for costs associated with the review of the plan and related compliance activities.

The Department estimates that 1 to 2 local governments will establish limited programs. Those programs will be required to establish a fee that must be at least $120 to cover the Department's costs; however, the bill does allow the local government to set the fee at a higher rate to cover the cost of their inspection activities as well. Due to the wide variance in the fees for existing local government programs and the variance in the number of acres subject to local government regulation, Fiscal Research was unable to determine a reasonable way to estimate the amount of revenue generated by limited local programs or what their expenses might be.

SOURCES OF DATA: Department of Environment and Natural Resource's Division of Land Resources

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jennifer Hoffmann & Stephanie Schmitt, Research Assistant

APPROVED BY: James D. Johnson

DATE: July 2, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, AND WAINWRIGHT**
(Chair/Chairs) for the Committee on **FINANCE**.

☒ ~~Committee~~ House Committee Substitute for #1
S.B. 861 A BILL TO BE ENTITLED AN ACT TO INCREASE THE NUMBER OF QUALIFIED DENTAL PRACTITIONERS IN THE STATE BY AUTHORIZING THE BOARD OF DENTAL EXAMINERS TO LICENSE BY CREDENTIALS PERSONS WHO ARE LICENSED TO PRACTICE DENTISTRY OR DENTAL HYGIENE IN OTHER STATES AND WHO OTHERWISE MEET STATE REQUIREMENTS FOR LICENSE BY CREDENTIALS, TO ISSUE A LIMITED VOLUNTEER DENTAL LICENSE, TO ISSUE AN INSTRUCTOR'S LICENSE, AND TO IMPOSE APPLICATION AND RENEWAL FEES FOR LICENSURE AUTHORIZED UNDER THIS ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to ~~the~~ House committee substitute bill (# 2), ☐ ~~which changes the title,~~ unfavorable as to ~~(the original bill)~~ (House Committee Substitute Bill # 1), ~~(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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 861

Health Care Committee Substitute Adopted 6/11/01
Finance Committee Substitute Adopted 8/14/01
Fourth Edition Engrossed 8/21/01
House Committee Substitute Favorable 6/19/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S861-PCS6874-LAf-73

Short Title: License by Credentials/Dentistry. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF QUALIFIED DENTAL PRACTITIONERS IN THE STATE BY AUTHORIZING THE BOARD OF DENTAL EXAMINERS TO LICENSE BY CREDENTIALS PERSONS WHO ARE LICENSED TO PRACTICE DENTISTRY OR DENTAL HYGIENE IN OTHER STATES AND WHO OTHERWISE MEET STATE REQUIREMENTS FOR LICENSE BY CREDENTIALS, TO ISSUE A LIMITED VOLUNTEER DENTAL LICENSE, TO ISSUE AN INSTRUCTOR'S LICENSE, AND TO IMPOSE APPLICATION AND RENEWAL FEES FOR LICENSURE AUTHORIZED UNDER THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-367. Dental providers for problem access areas.**

The State's dental public health program shall encourage the expansion of current educational and training programs for dentists, dental hygienists, and dental assistants targeted to serve citizens' unmet needs, particularly in the rural and low-income areas that have traditionally had problems in accessing dental care. The program shall also promote and encourage the recruitment of in-State and out-of-state private sector dental personnel to work in these dental health professional shortage areas."

SECTION 2. G.S. 90-36 reads as rewritten:

"**§ 90-36. Licensing practitioners of other states.**

~~The North Carolina State Board of Dental Examiners may, in its discretion, issue a license to practice dentistry in this State without an examination other than clinical to a~~

~~legal and ethical practitioner of dentistry who moves into North Carolina from another state or territory of the United States, whose standard of requirements is equal to that of the State of North Carolina and in which such applicant has conducted a legal and ethical practice of dentistry for at least five years, next preceding his or her removal and who has not, during his period of practice, been found guilty by the state regulatory agency charged with the responsibility therefor of the violation of the ethics of his profession, nor found guilty by a court of competent jurisdiction of the violation of the laws of the state which issued license to him or of the criminal laws of the United States, nor whose license to practice dentistry has been revoked or suspended by a duly constituted authority.~~

~~Application for license to be issued under the provisions of this section shall be accompanied by a certificate from the dental board or like board of the state from which said applicant removed, certifying that the applicant is the legal holder of a license to practice dentistry in that state, and for a period of five years immediately preceding the application has engaged in the practice of dentistry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the laws of the state or of the United States, or for the violation of the ethics of the profession of dentistry.~~

~~Application for a license under this section shall be made to the North Carolina State Board of Dental Examiners within the six months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from a reputable, recognized and approved dental college, school or dental department of a college or university.~~

~~Any license issued upon the application of any dentist from any other state or territory shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina State Board of Dental Examiners upon examination of applicants and the rights and privileges to practice the profession of dentistry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this Article on dentists originally examined by the North Carolina State Board of Dental Examiners.~~

(a) The North Carolina State Board of Dental Examiners may issue a license by credentials to an applicant who has been licensed to practice dentistry in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications, is in good standing with the licensing jurisdiction, has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board, and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dentistry.

(b) The applicant for licensure by credentials shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of

dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years immediately preceding the date of application.

(2) Has not been the subject of final or pending disciplinary action in the military, in any state or territory in which the applicant is or has ever been licensed to practice dentistry, or in any state or territory in which the applicant has held any other professional license.

(3) Presents evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent dental care.

(4) Has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application to the North Carolina State Board of Dental Examiners, the form of which shall be determined by the Board, pay the fee required by G.S. 90-39, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet the criteria or requirements established by the Board.

(e) The holder of a license issued under this section shall establish a practice location and actively practice dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), in North Carolina within one year from the date the license is issued. The license issued under this section shall be void upon a finding by the Board that the licensee fails to limit the licensee's practice to North Carolina or that the licensee no longer actively practices dentistry in North Carolina."

SECTION 3. Article 16 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-224.1. Licensure by credentials.**

(a) The Board may issue a license by credentials to an applicant who has been licensed to practice dental hygiene in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; has passed satisfactory examinations of proficiency in the knowledge and practice of dental hygiene as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dental hygiene.

(b) The applicant for licensure shall be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or authorized unit, and have graduated from a dental hygiene program or school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dental hygiene, as defined in G.S. 90-221, under the supervision of a licensed dentist for a minimum of two years immediately preceding the date of application.

(2) Has no history of disciplinary action or pending disciplinary action in the military or in any state or territory in which the applicant is or has ever been licensed.

(3) Has no felony convictions and has no other criminal convictions that would affect the applicant's ability to render competent dental hygiene care.

(4) Has not failed a licensure examination administered by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application, the form of which shall be determined by the Board, pay the fee required by G.S. 90-232, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet other criteria or requirements established by the Board, which may include an examination or interview before the Board or its authorized agents.

(e) This section shall not be construed to include licensure by reciprocity, which is prohibited."

SECTION 4. Article 2 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-37.1. Limited volunteer dental license.**

(a) The North Carolina State Board of Dental Examiners may issue to an applicant a 'Limited Volunteer Dental License' to practice dentistry only in nonprofit health care facilities serving low-income populations in the State. Holders of a limited volunteer dental license may volunteer their professional services, without compensation, only for the purpose of helping to meet the dental health needs of these persons served by these facilities. The Board may issue a limited license to an applicant under this section who:

(1) Has an out-of-state current or expired license, or an expired license in this State, or is authorized to treat veterans or personnel enlisted in the United States armed services; and

(2) Has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), within the past five years.

(b) The limited license may be issued to an applicant who produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue a 'limited volunteer dental license' to an applicant who the Board determines is unfit to practice dentistry.

(c) The applicant shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(d) The applicant shall meet all of the following conditions:

(1) Show that the applicant has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years.

(2) Show that the applicant has not been the subject of final or pending disciplinary action in any state in which the applicant has ever been licensed to practice dentistry or in any state in which the applicant has held any other professional license.

(3) Present evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent care.

(4) Present evidence that the applicant has no pending Veterans Administration or military disciplinary actions or any history of such disciplinary action.

(5) Show that the applicant has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(e) The applicant shall submit an application, the form of which shall be determined by the Board, pay the fee required under G.S. 90-39, and successfully complete examinations in Jurisprudence and Sterilization and Infection Control. The Board may charge and collect fees for license application and annual renewal as required under G.S. 90-39, except that credentialing fees applicable under G.S. 90-39(13) are waived for holders of a limited volunteer dental license.

(f) Holders of a limited volunteer dental license shall comply with the continuing dental education requirements adopted by the Board including CPR training.

(g) The holder of a limited license under this section who practices dentistry other than as authorized in this section shall be guilty of a Class 1 misdemeanor with each day's violation constituting a separate offense. Upon proof of practice other than as authorized in this section, the Board may suspend or revoke the limited license after notice to the licensee. For violations of the dental practice act or rules adopted under the act that are applicable to a limited license practice, the Board has the same authority to investigate and impose sanctions on limited license holders as it has for those holding an unlimited license.

(h) The Board shall maintain a nonexclusive list of nonprofit health care facilities serving the dental health needs of low-income populations in the State. Upon request, the Board shall consider adding other facilities to the list.

(i) The Board may adopt rules in accordance with Chapter 150B of the General Statutes to implement this section."

SECTION 5. G.S. 90-39 reads as rewritten:

"**§ 90-39. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental

Examiners, it is authorized to charge and collect fees established by its rules ~~and regulations~~ not exceeding the following:

(1) Each application for general dentistry examination $500.00
(2) Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the board of each such dentist 140.00
(2a) Penalty for late renewal of any license or permit 50.00
(3) Each provisional license 150.00
(4) Each intern permit or renewal thereof 150.00
(5) Each certificate of license to a resident dentist desiring to change to another state or territory 30.00
(6) Repealed by Session Laws 1995, (Reg. Sess., 1996), c. 584, s. 1.
(7) Each license to resume the practice issued to a dentist who has retired from and returned to this State 300.00
(8) Each instructor's license or renewal thereof 140.00
(9) With each renewal of a dentistry license, an annual fee to help fund special peer review organizations for impaired dentists 50.00
(10) Each duplicate of any license, permit, or certificate issued by the Board 25.00
(11) Each office inspection for general anesthesia and parenteral sedation permits 350.00
(12) Each general anesthesia and parenteral sedation permit application or renewal of permit ..... ~~50.00~~ 50.00
(13) Each application for license by credentials 2,000.00
(14) Each application for limited volunteer dental license 100.00
(15) Each limited volunteer dental license annual renewal ..... 25.00."

SECTION 6. G.S. 90-232 reads as rewritten:

"**§ 90-232. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules ~~and regulations~~ not exceeding the following:

(1) Each applicant for examination $125.00
(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist... 60.00
(3) Each restoration of license 60.00
(4) Each provisional license 60.00
(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory 25.00

(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists ..... ~~40.00.~~ 40.00

(7) Each license by credentials ..... 1,000.00.

In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

SECTION 7. G.S. 90-29.5 reads as rewritten:

"**§ 90-29.5. Instructor's license.**

~~The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in the State, but whom the Board finds to be qualified by professional training and experience and upon the same examination as that offered to licensed dentists in North Carolina plus an oral examination. An instructor's license will authorize him to teach and to practice dentistry in or on behalf of a dental school or college offering a doctoral degree in dentistry, operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, but only within the confines of the principal facility of the school or college and of any teaching hospital adjacent thereto. Application for an instructor's license shall be made in accordance with rules and regulations of the North Carolina State Board of Dental Examiners. A person holding an instructor's license shall have, within the scope of his authorized practice, all the duties and responsibilities of any dentist who has been licensed upon examination by the North Carolina State Board of Dental Examiners, and shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-41 upon a determination by the Board that he has violated any of the terms or provisions of this Article. An instructor's license shall be subject to annual renewal by the North Carolina State Board of Dental Examiners, as provided in G.S. 90-31.~~

(a) The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in this State if the person meets both of the following conditions:

(1) Is licensed to practice dentistry anywhere in the United States or in any country, territory, or other recognized jurisdiction.

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; such dental school or academic medical center shall be accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations.

(b) The holder of an instructor's license may teach and practice dentistry:

(1) In or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners;

(2) In connection with an academic medical center; and

(3) At any teaching hospital adjacent to a dental school or an academic medical center.

(c) Application for an instructor's license shall be made in accordance with the rules of the North Carolina State Board of Dental Examiners. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee. The holder of an instructor's license shall be subject to the provisions of this Article."

SECTION 8. G.S. 90-29(c)(3) reads as rewritten:

"(3) The teaching or practice of dentistry, in dental schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, by any person or persons licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized ~~jurisdiction;~~jurisdiction until December 31, 2002. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee."

SECTION 9. G.S. 90-41(f) reads as rewritten:

"(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional ~~license~~license, instructor's license, and intern permit."

SECTION 10. G.S. 90-29.4(1) reads as rewritten:

"(1) An intern permit shall be valid for no more than one year from the date of issue thereof; provided, however, that the Board may, in its discretion, renew such permit for not more than ~~three~~ five additional one-year periods; and, provided, further, that no person shall be granted an intern permit or intern permits embracing or covering an aggregate time span of more than ~~48~~ 72 calendar months;".

SECTION 11. If any section of this act is declared to be unconstitutional, preempted, or otherwise invalid by the courts, except where a contrary intent is clearly indicated by the text of the section, it shall not affect the validity of the act as a whole or any part other than the section declared to be invalid, and any previous statutory law replaced or modified by the section declared invalid shall be reinstated as if the previous law had not been changed. If any part of a numbered section of this act is declared invalid, the whole section shall fail.

SECTION 12. This act becomes effective January 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 861

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

S861-ALA-63 [v.1]

Date 7-3-02 ,2002

Comm. Sub. [NO]
Amends Title [NO]
Fifth Edition

Representative

moves to amend the bill on page 9, line 11,
by deleting the word "July" and substituting the word "January".

SIGNED Nancy Fu Jarrell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 861

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

S861-ASC-40 [v.2]

Date 7/3/02 ,2002

Comm. Sub. [NO]
Amends Title [NO]
Fifth Edition

Representative Jarrell

moves to amend the bill on page 3, lines 24 and 25 by deleting those lines;
on page 4, lines 19 and 20 by deleting those lines; and
on page 8, line 29 through page 9, line 3 by deleting those lines and renumbering the following sections accordingly.

SIGNED Nancy L. Jarrell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 5

SENATE BILL 861

Health Care Committee Substitute Adopted 6/11/01
Finance Committee Substitute Adopted 8/14/01
Fourth Edition Engrossed 8/21/01
House Committee Substitute Favorable 6/19/02

Short Title: License by Credentials/Dentistry. (Public)

Sponsors:

Referred to:

April 4, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF QUALIFIED DENTAL PRACTITIONERS IN THE STATE BY AUTHORIZING THE BOARD OF DENTAL EXAMINERS TO LICENSE BY CREDENTIALS PERSONS WHO ARE LICENSED TO PRACTICE DENTISTRY OR DENTAL HYGIENE IN OTHER STATES AND WHO OTHERWISE MEET STATE REQUIREMENTS FOR LICENSE BY CREDENTIALS, TO ISSUE A LIMITED VOLUNTEER DENTAL LICENSE, TO ISSUE AN INSTRUCTOR'S LICENSE, AND TO IMPOSE APPLICATION AND RENEWAL FEES FOR LICENSURE AUTHORIZED UNDER THIS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 14 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-367. Dental providers for problem access areas.**

The State's dental public health program shall encourage the expansion of current educational and training programs for dentists, dental hygienists, and dental assistants targeted to serve citizens' unmet needs, particularly in the rural and low-income areas that have traditionally had problems in accessing dental care. The program shall also promote and encourage the recruitment of in-State and out-of-state private sector dental personnel to work in these dental health professional shortage areas."

SECTION 2. G.S. 90-36 reads as rewritten:

"**§ 90-36. Licensing practitioners of other states.**

~~The North Carolina State Board of Dental Examiners may, in its discretion, issue a license to practice dentistry in this State without an examination other than clinical to a legal and ethical practitioner of dentistry who moves into North Carolina from another state or territory of the United States, whose standard of requirements is equal to that of~~

~~the State of North Carolina and in which such applicant has conducted a legal and ethical practice of dentistry for at least five years, next preceding his or her removal and who has not, during his period of practice, been found guilty by the state regulatory agency charged with the responsibility therefor of the violation of the ethics of his profession, nor found guilty by a court of competent jurisdiction of the violation of the laws of the state which issued license to him or of the criminal laws of the United States, nor whose license to practice dentistry has been revoked or suspended by a duly constituted authority.~~

~~Application for license to be issued under the provisions of this section shall be accompanied by a certificate from the dental board or like board of the state from which said applicant removed, certifying that the applicant is the legal holder of a license to practice dentistry in that state, and for a period of five years immediately preceding the application has engaged in the practice of dentistry; is of good moral character and that during the period of his practice no charges have been filed with said board against the applicant for the violation of the laws of the state or of the United States, or for the violation of the ethics of the profession of dentistry.~~

~~Application for a license under this section shall be made to the North Carolina State Board of Dental Examiners within the six months of the date of the issuance of the certificate hereinbefore required, and said certificate shall be accompanied by the diploma or other evidence of the graduation from a reputable, recognized and approved dental college, school or dental department of a college or university.~~

~~Any license issued upon the application of any dentist from any other state or territory shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina State Board of Dental Examiners upon examination of applicants and the rights and privileges to practice the profession of dentistry under any license so issued shall be subject to the same duties, obligations, restrictions and the conditions as imposed by this Article on dentists originally examined by the North Carolina State Board of Dental Examiners.~~

(a) The North Carolina State Board of Dental Examiners may issue a license by credentials to an applicant who has been licensed to practice dentistry in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications, is in good standing with the licensing jurisdiction, has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board, and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dentistry.

(b) The applicant for licensure by credentials shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years immediately preceding the date of application.

(2) Has not been the subject of final or pending disciplinary action in the military, in any state or territory in which the applicant is or has ever been licensed to practice dentistry, or in any state or territory in which the applicant has held any other professional license.

(3) Presents evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent dental care.

(4) Has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application to the North Carolina State Board of Dental Examiners, the form of which shall be determined by the Board, pay the fee required by G.S. 90-39, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet the criteria or requirements established by the Board.

(e) The holder of a license issued under this section shall establish a practice location and actively practice dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), in North Carolina within one year from the date the license is issued. The license issued under this section shall be void upon a finding by the Board that the licensee fails to limit the licensee's practice to North Carolina or that the licensee no longer actively practices dentistry in North Carolina.

(f) The Board may adopt temporary rules in accordance with G.S. 150B-21.1(a10) to implement this section."

SECTION 3. Article 16 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-224.1. Licensure by credentials.**

(a) The Board may issue a license by credentials to an applicant who has been licensed to practice dental hygiene in any state or territory of the United States if the applicant produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations; has passed satisfactory examinations of proficiency in the knowledge and practice of dental hygiene as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may, in its discretion, refuse to issue a license by credentials to an applicant who the Board determines is unfit to practice dental hygiene.

(b) The applicant for licensure shall be of good moral character, have graduated from an accredited high school or hold a high school equivalency certificate duly issued by a governmental agency or authorized unit, and have graduated from a dental hygiene program or school accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(c) The applicant must meet all of the following conditions:

(1) Has been actively practicing dental hygiene, as defined in G.S. 90-221, under the supervision of a licensed dentist for a minimum of two years immediately preceding the date of application.

(2) Has no history of disciplinary action or pending disciplinary action in the military or in any state or territory in which the applicant is or has ever been licensed.

(3) Has no felony convictions and has no other criminal convictions that would affect the applicant's ability to render competent dental hygiene care.

(4) Has not failed a licensure examination administered by the North Carolina State Board of Dental Examiners.

(d) The applicant for licensure by credentials shall submit an application, the form of which shall be determined by the Board, pay the fee required by G.S. 90-232, successfully complete examinations in Jurisprudence and Sterilization and Infection Control, and meet other criteria or requirements established by the Board, which may include an examination or interview before the Board or its authorized agents.

(e) This section shall not be construed to include licensure by reciprocity, which is prohibited.

(f) The Board may adopt temporary rules in accordance with G.S. 150B-21.1(a10) to implement this section."

SECTION 4. Article 2 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-37.1. Limited volunteer dental license.**

(a) The North Carolina State Board of Dental Examiners may issue to an applicant a 'Limited Volunteer Dental License' to practice dentistry only in nonprofit health care facilities serving low-income populations in the State. Holders of a limited volunteer dental license may volunteer their professional services, without compensation, only for the purpose of helping to meet the dental health needs of these persons served by these facilities. The Board may issue a limited license to an applicant under this section who:

(1) Has an out-of-state current or expired license, or an expired license in this State, or is authorized to treat veterans or personnel enlisted in the United States armed services; and

(2) Has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), within the past five years.

(b) The limited license may be issued to an applicant who produces satisfactory evidence to the Board that the applicant has the required education, training, and qualifications; is in good standing with the licensing jurisdiction; has passed satisfactory examinations of proficiency in the knowledge and practice of dentistry as determined by the Board; and meets all other requirements of this section and rules adopted by the Board. The Board may conduct examinations and interviews to test the qualifications of the applicant and may require additional information that would affect the applicant's ability to render competent dental care. The Board may, in its discretion, refuse to issue

a 'limited volunteer dental license' to an applicant who the Board determines is unfit to practice dentistry.

(c) The applicant shall be of good moral character and shall have graduated from and have a DDS or DMD degree from a program of dentistry in a school or college accredited by the Commission on Dental Accreditation of the American Dental Association and approved by the Board.

(d) The applicant shall meet all of the following conditions:

(1) Show that the applicant has actively practiced dentistry, as defined in G.S. 90-29(b)(1) through (b)(9), for a minimum of five years.

(2) Show that the applicant has not been the subject of final or pending disciplinary action in any state in which the applicant has ever been licensed to practice dentistry or in any state in which the applicant has held any other professional license.

(3) Present evidence that the applicant has no felony convictions and that the applicant has no other criminal convictions that would affect the applicant's ability to render competent care.

(4) Present evidence that the applicant has no pending Veterans Administration or military disciplinary actions or any history of such disciplinary action.

(5) Show that the applicant has not failed an examination conducted by the North Carolina State Board of Dental Examiners.

(e) The applicant shall submit an application, the form of which shall be determined by the Board, pay the fee required under G.S. 90-39, and successfully complete examinations in Jurisprudence and Sterilization and Infection Control. The Board may charge and collect fees for license application and annual renewal as required under G.S. 90-39, except that credentialing fees applicable under G.S. 90-39(13) are waived for holders of a limited volunteer dental license.

(f) Holders of a limited volunteer dental license shall comply with the continuing dental education requirements adopted by the Board including CPR training.

(g) The holder of a limited license under this section who practices dentistry other than as authorized in this section shall be guilty of a Class 1 misdemeanor with each day's violation constituting a separate offense. Upon proof of practice other than as authorized in this section, the Board may suspend or revoke the limited license after notice to the licensee. For violations of the dental practice act or rules adopted under the act that are applicable to a limited license practice, the Board has the same authority to investigate and impose sanctions on limited license holders as it has for those holding an unlimited license.

(h) The Board shall maintain a nonexclusive list of nonprofit health care facilities serving the dental health needs of low-income populations in the State. Upon request, the Board shall consider adding other facilities to the list.

(i) The Board may adopt rules in accordance with Chapter 150B of the General Statutes to implement this section."

SECTION 5. G.S. 90-39 reads as rewritten:

"**§ 90-39. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules ~~and regulations~~ not exceeding the following:

(1) Each application for general dentistry examination $500.00

(2) Each general dentistry license renewal, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dentist licensed to practice in this State by mailing such notice to the last address of record with the board of each such dentist 140.00

(2a) Penalty for late renewal of any license or permit 50.00

(3) Each provisional license 150.00

(4) Each intern permit or renewal thereof 150.00

(5) Each certificate of license to a resident dentist desiring to change to another state or territory 30.00

(6) Repealed by Session Laws 1995, (Reg. Sess., 1996), c. 584, s. 1.

(7) Each license to resume the practice issued to a dentist who has retired from and returned to this State 300.00

(8) Each instructor's license or renewal thereof 140.00

(9) With each renewal of a dentistry license, an annual fee to help fund special peer review organizations for impaired dentists 50.00

(10) Each duplicate of any license, permit, or certificate issued by the Board 25.00

(11) Each office inspection for general anesthesia and parenteral sedation permits 350.00

(12) Each general anesthesia and parenteral sedation permit application or renewal of permit ..... ~~50.00~~ 50.00

(13) Each application for license by credentials 2,000.00

(14) Each application for limited volunteer dental license 100.00

(15) Each limited volunteer dental license annual renewal ..... 25.00."

SECTION 6. G.S. 90-232 reads as rewritten:

"**§ 90-232. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules ~~and regulations~~ not exceeding the following:

(1) Each applicant for examination $125.00

(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist ... 60.00

(3) Each restoration of license 60.00

(4) Each provisional license 60.00

(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory 25.00

(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists ..... ~~40.00.~~ 40.00

(7) Each license by credentials ..... 1,000.00.

In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

SECTION 7. G.S. 90-29.5 reads as rewritten:

"**§ 90-29.5. Instructor's license.**

~~The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in the State, but whom the Board finds to be qualified by professional training and experience and upon the same examination as that offered to licensed dentists in North Carolina plus an oral examination. An instructor's license will authorize him to teach and to practice dentistry in or on behalf of a dental school or college offering a doctoral degree in dentistry, operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, but only within the confines of the principal facility of the school or college and of any teaching hospital adjacent thereto. Application for an instructor's license shall be made in accordance with rules and regulations of the North Carolina State Board of Dental Examiners. A person holding an instructor's license shall have, within the scope of his authorized practice, all the duties and responsibilities of any dentist who has been licensed upon examination by the North Carolina State Board of Dental Examiners, and shall be subject to those various disciplinary measures and penalties set forth in G.S. 90-41 upon a determination by the Board that he has violated any of the terms or provisions of this Article. An instructor's license shall be subject to annual renewal by the North Carolina State Board of Dental Examiners, as provided in G.S. 90-31.~~

(a) The Board may issue an instructor's license to a person who is not otherwise licensed to practice dentistry in this State if the person meets both of the following conditions:

(1) Is licensed to practice dentistry anywhere in the United States or in any country, territory, or other recognized jurisdiction.

(2) Has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated; such dental school or academic medical center shall be accredited by the American Dental Association's Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations.

(b) The holder of an instructor's license may teach and practice dentistry:

(1) In or on behalf of a dental school or college offering a doctoral degree in dentistry operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners;

(2) In connection with an academic medical center; and

(3) At any teaching hospital adjacent to a dental school or an academic medical center.

(c) Application for an instructor's license shall be made in accordance with the rules of the North Carolina State Board of Dental Examiners. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee. The holder of an instructor's license shall be subject to the provisions of this Article."

SECTION 8. G.S. 90-29(c)(3) reads as rewritten:

"(3) The teaching or practice of dentistry, in dental schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Dental Examiners, by any person or persons licensed to practice dentistry anywhere in the United States or in any country, territory or other recognized ~~jurisdiction;~~jurisdiction until December 31, 2002. On or after January 1, 2003, all dentists previously practicing under G.S. 90-29(c)(3) shall be granted an instructor's license upon application to the Board and payment of the required fee."

SECTION 9. G.S. 90-41(f) reads as rewritten:

"(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional ~~license~~license, instructor's license, and intern permit."

SECTION 10. G.S. 90-29.4(1) reads as rewritten:

"(1) An intern permit shall be valid for no more than one year from the date of issue thereof; provided, however, that the Board may, in its discretion, renew such permit for not more than ~~three~~ five additional one-year periods; and, provided, further, that no person shall be granted an intern permit or intern permits embracing or covering an aggregate time span of more than ~~48~~ 72 calendar months;".

SECTION 11. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a10) Notwithstanding the provisions of subsection (a) of this section, the North Carolina State Board of Dental Examiners may adopt temporary rules to implement the provisions of G.S. 90-36 and G.S. 90-224.1. After having the proposed temporary rules published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Board shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule.

(2) Accept oral and written comments on the proposed temporary rule.

(3) Hold at least one public hearing on the proposed temporary rule.

When the Board adopts a temporary rule pursuant to this subsection, the Board must submit a reference to this subsection as the Board's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Board in accordance with this subsection."

SECTION 12. If any section of this act is declared to be unconstitutional, preempted, or otherwise invalid by the courts, except where a contrary intent is clearly indicated by the text of the section, it shall not affect the validity of the act as a whole or any part other than the section declared to be invalid, and any previous statutory law replaced or modified by the section declared invalid shall be reinstated as if the previous law had not been changed. If any part of a numbered section of this act is declared invalid, the whole section shall fail.

SECTION 13. This act becomes effective July 1, 2003.

SENATE BILL 861:
License by Credentials/Dentistry

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Purcell
Date:	July 2, 2002	**Summary by:**	Linda Attarian
Version:	5th Edition		Committee Counsel

SUMMARY: ***Senate Bill 861, 5th Edition, authorizes the NC Board of Dental Examiners (Board) to:***

- ***Issue NC licenses to dentists and dental hygienists by credential review.***
- ***Issue limited volunteer licenses to dentists to practice, without compensation, in non-profit health care facilities serving low-income populations.***
- ***Issue instructor's licenses to dentists who practice in or on behalf of a dental school or academic medical center or teaching hospital.***
- ***Impose fees in the amounts up to: 1) $2000 for a dental license issued by credentials; 2) $1000 for a dental hygiene license issued by credentials; and 3) $100.00 for a limited volunteer license.***

The bill becomes effective July 1, 2003 (The effective date needs to be changed.)

House Bill, introduced by Rep. Allen, is a companion bill.

CURRENT LAW:

NC licensing requirements applicable to dentists who have practiced for at least five years in one or more other states and then wish to establish a practice in NC:

The Board currently allows dentists who have practiced at least five years in another state prior to applying for licensure in North Carolina to forego the written examination but not the clinical examination. The applicant must also meet additional requirements, including graduation from a reputable university or college. Each candidate must furnish his own patients and instruments for the clinical examination.

NC licensing requirements of dental hygienists who have practiced for at least two years in one or more other states and come to NC and apply for licensure:

The Board currently requires any applicant for licensure to satisfactorily pass a written examination. There are no requirements that an applicant for licensure has graduated from a school or program accredited by the Commission on Dental Accreditation of the American Dental Association. Under current law, an applicant must be a graduate of a program of dental hygiene in a school or college *approved by the Board*, and the Board has adopted a rule requiring the applicant to have passed a written examination conducted by the National Board of Dental Hygiene Examination.

SECTION-BY-SECTION BILL ANALYSIS:

Section 1 requires the State's public health system to encourage the recruitment and training of private-sector dental providers to serve in dental health shortage areas.

Section 2 establishes a licensure by credential review procedure to license dentists who have been in practice for at least 5 years immediately preceding the date of application and who meet other requirements of the Board. Once licensed in NC, a licensee must initiate his or her practice in North Carolina within one year from the date the license is issued, must limit practice to North Carolina and must "actively practice dentistry" to retain the license.

Sections 3 establishes a licensure-by-credentials review procedure to license out-of-state dental hygienists who have been practicing for at least 2 years immediately preceding the date of application and meet other requirements of the Board. The licensee must have completed dental hygiene education and training approved by the Board and passed the National Board of Dental Hygiene Examination administered by the Joint Commission on National Dental Examination and have graduated from a dental hygiene program or school accredited by the Commission on Dental Accreditation of the American Dental Association.

Section 4 establishes a volunteer licensure procedure for dentists with expired licenses from NC or current or expired licenses from other states who have practiced within the last 5 years and who wish to practice in non-profit health care facilities serving low-income populations of this State. Any holder of the limited volunteer dental license shall be guilty of a Class 1 misdemeanor if he or she is found to practice dentistry in any setting other than a nonprofit health care facility serving low-income populations, with each day being a new violation.

Sections 5 and 6 authorize the Board to impose new application and renewal fees not to exceed:

Application for license by credentials for dentists	$2,000
Application for license by credentials for dental hygienists	$1,000
Application for limited volunteer dental license	$ 100
Limited volunteer dental license annual renewal	$ 25

Section 7 amends G.S. 90-29.5 that authorizes the Board to issue instructor's license to persons who teach and practice dentistry in connection with an academic medical center or teaching hospital adjacent to a dental school or to an academic medical center.

Section 8 makes a conforming amendment to G.S. 90-29(c)(3) that currently provides that teaching dentistry in dental schools or colleges in North Carolina does not constitute the practice of dentistry and thus does not require licensure, to provide that as of January 1, 2002, these instructors will be required to obtain an instructor's license and pay the required fee.

Section 9 makes a conforming amendment to G.S. 90-41(f) to include someone holding an instructor's license as a licensee for the purposes of the statute.

Section 10 expands the time frames for which an intern permit is valid.

Section 11 authorizes the North Carolina State Board of Dental Examiners to adopt temporary rules on an ongoing basis to implement the licensure by credential provisions. Prior to adopting the temporary rules, the Board is required to publish the proposed temporary rules, notify persons on the Board's mailing list, accept comments, and hold at least one public hearing.

Section 12 is a severability clause

Section 13 makes the act effective July 1, 2003.

DEFINITION OF TERMS:

Licensure by Credentials: In granting licensure by credentials, a state board of dentistry determines that the candidate is currently licensed in another jurisdiction, has practiced for a minimum specified amount of time prior to application (usually five years) and that the state has licensure standards equivalent to the one where licensure by credentials is being sought. If the candidate meets all required criteria, licensure examinations are not necessary and a license is granted.

Reciprocity: Licensure by reciprocity refers to a situation in which a jurisdiction has authority to grant licensure only to licensees of states that do likewise to their licensees. Such decisions are based on formal agreements between state boards. Today, the majority of states grant licensure by credentials versus having reciprocal agreements with other states.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 861 (5th Edition)

SHORT TITLE: License by Credentials/ Dentistry

SPONSOR(S): Sen. Purcell

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			* No General Fund Impact *		
Dental Board	$115,500	$114,375	$114,375	$114,375	$114,375

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Dental Examiners, State Dental Health Program.

EFFECTIVE DATE: January 1, 2003.

BILL SUMMARY: The bill gives the North Carolina Board of Dental Examiners several new powers. First, the legislation allows the board to issue North Carolina licenses to out of state dentists and dental hygienists if those professionals hold an out-of-state license, meet the Board's approval, and meet other professional standards. Second, it authorizes the Board to issue "limited volunteer licenses" to dentists, allowing those practitioners to practice, without compensation, in non-profit health care facilities serving low-income populations. Third, it allows the Board to issue instructor's licenses to dentists who are not licensed in the state but who meet the Board's approval to practice in or on behalf of a dental school, an academic medical center, or teaching hospital. Fourth, the bill imposes fees of up to $2,000 for a dental license issued by credentials, $1,000 for a similar dental hygienist licensing, and $100 for a limited volunteer license. The latter license can be renewed for $25. Finally, the bill encourages the state dental health program to expand its current education and training programs, and recruit in-state and out-of-state dental health professionals.

ASSUMPTIONS AND METHODOLOGY: The only revenue impact of the bill relates to the fees. Under the bill, a new fee of $2,000 per dentist and $1,000 per dental hygienist will be levied on out of state professionals who seek to be credentialed in North Carolina. Under current law, these individuals would be required to take the entire clinical exam even if they are licensed in

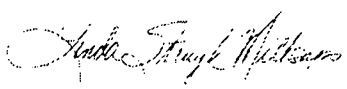
another state. Representatives of the Dental Society indicate this clinical exam can take several days.

The American Dental Association reports that, on average, states that offer credentialing to dentists see 38 applications per year. Using this number as a proxy suggests that North Carolina's Board of Dental Examiners will see approximately $76,000 in revenue (38 x $2,000) as result of this provision. While no firm data is available on dental hygienist credentialing, representatives of the North Carolina Dental Society expect the number of hygienists applying for credentials will be similar to the number of dentists. Using 38 a year as a proxy suggests that the Board will gain $38,000 (38 x $1,000). No firm data is available on the number of volunteer dental licenses expected in North Carolina. However, it has been reported that the North Carolina Association of Free Clinics hopes to recruit 12-15 dentists to the state for this type of work. Using the upper end as the estimate suggests that this portion of the bill would raise $1,500 in year one and $375 in the out years. The total revenue generated from these fees is included in the chart above.

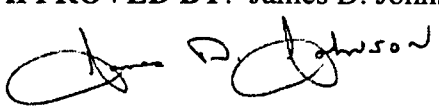
The bill also has expenditure implications. The bill directs the state's dental health program to expand its education and training efforts, as well as its in-state and out-of-state recruitment of dental health professionals. However, because of the vague nature of this mandate, no exact fiscal estimate is possible on this portion of the bill.

FISCAL RESEARCH DIVISION (919) 733-4910

PREPARED BY: Linda Struyk Millsaps



APPROVED BY: James D. Johnson



DATE: July 1, 2002

MINUTES
HOUSE FINANCE COMMITTEE

July 10, 2002

The House Committee on Finance met on Thursday, July 10, 2002 in Room 544 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairmen Allen, Buchanan, Luebke and Wainwright, Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Decker, Dedmon, Eddins, Edwards, Gibson, Hackney, McComas, McCombs, Rayfield, Weiss, Willingham, Wilson, and Womble. The following Sergeant-at-Arms staff was present: Bob Fowler, Bill Freeman, Dusty Rhodes and Walter Spell. Staff including Richard Bostic, Trina Griffin, Canaan Huie, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and introduced the following pages: Cade Brummett and Jeff Carroll, Brunswick County, sponsored by Representative Redwine, Ian Curl, Catawba County, sponsored by Representative Hilton and Joy Killens, Wake County sponsored by Representative Blue.

Representative Gibson, bill sponsor HB 1576, A BILL TO BE ENTITLED AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE, was recognized by Chairman Buchanan to explain the bill. Representative Gibson gave a brief explanation of the bill. He said HB 1576 was a local bill that amends the Charter of the Town of Badin by repealing the sections that forbids the ad valorem tax rate to exceed the previous year's rate by more than 10%. Representative Gibson also stated there was no opposition to this legislation. Representative Womble made a motion that at the appropriate time to give HB 1509 a favorable report. Representative Jarrell asked if the town set their rate every ten years. Representative Gibson explained that the town had been in existence for many years but they just incorporated ten years ago. Representative Jarrell also inquired about the tax rate and Representative Gibson said it was between 21 and 25 percent. A vote was taken and Representative Womble's motion passed and was given a favorable report. A copy of HB 1576 and a summary is attached.

HB 1589 A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF PRINCETON was the next bill on the agenda for discussion. Representative Daughtry, bill sponsor, was recognized to explain the bill. After a brief explanation, Representative Rayfield made a motion to give the bill a favorable report. The motion passed and HB 1589 was given a favorable report.

The last bill to be discussed was HB 1646 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF ROWLAND. Chairman Buchanan recognized Representative Bonner, bill sponsor to explain the bill. He explained there was approximately two square miles near the South Carolina border that the town of Rowland wanted to annex portions of NC State Highway 130, Interstate 95, Interstate 95 ramps, and US Highways 301 and 501 because the town needed authority to pursue speed violators in this area. Representative Hill said this area was near his district and agreed with Representative Bonner and made a motion to give HB 1646 a favorable report. Representative Decker was recognized for a question concerning once you

moved the city limits to the highways in question that the city would have no problem annexing the property along the highways and inquired if the city has any plans to build or use the property for anything. Representative Bonner said that this area had no businesses or homeowners and had no plans for development.

Chairman Buchanan announced at the request of bill sponsor, Representative Cox, HB 1661 was removed from the calendar to be discussed at a later date.

The Chair announced the following occupancy tax bills would be re-referred to Rep. Jarrell's subcommittee:

HB 1668 Modify Southport Occupancy Taxes-Representative Redwine
HB 1707 Beach Towns Room Tax-Representative McComas
HB 1720 Wilmington Occupancy Tax-Representative Wright
SB 1357 Amend Durham Occupancy Tax Provisions-Senator Gulley
SB 1195 Seven Devils Occupancy Tax-Senator Foxx

Representative Jarrell was recognized for an announcement for a subcommittee meeting around her desk immediately following the Finance meeting.

The meeting adjourned the meeting at 8:43 a.m.

Respectfully submitted,

Representative Charles Buchanan
Chairman

Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

July 10, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1576 **Badin Charter –Rep. Gibson, Barbee, and Goodwin**

HB 1589 **Princeton Charter Consolidation-Rep. Daughtry**

HB 1646 **Rowland Annexation-Rep. Bonner**

HB 1661 **Lee Water Plant Private Sale-Rep. Cox and Davis**

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 10, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrea Schway	Rep. Alexander
Uttha Withrow	NC State Watch
Joe + Mark Baden	Scout Project
Cam Cover	BPMHL
Brock Winstead	NC Sierra Club
[illegible]	[illegible]
Andy Romanet	NCLM
David Barnes	Poyner + Spruill.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN. BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1576 A BILL TO BE ENTITLED AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1576*

Short Title:	Badin Charter.	(Local)
Sponsors:	Representatives Gibson, Barbee, and Goodwin (Primary Sponsors).	
Referred to:	Finance.	

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5.3 of the Charter of the Town of Badin, being Chapter 894, Session Laws of 1989, as rewritten by Section 1 of Chapter 827, Session Laws of 1991 and S.L. 2000-36, is repealed.

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

HOUSE BILL 1576:
Badin Charter

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Gibson, Barbee, and Goodwin
Date:	July 8, 2002		
Version:	1st Edition	**Analysis by:**	Martha Walston Committee Counsel

SUMMARY: House Bill 1576 is a local bill that amends the Charter of the Town of Badin by repealing the section that forbids the ad valorem tax rate to exceed the previous year's rate by more than 10%.

CURRENT LAW: G.S. 160A-209 authorizes a city to levy property taxes without restriction as to rate or amount for the following purposes:

- Debt Service - To pay the principal of and interest on all general obligation bonds and notes of the city.
- Deficits - To supply an unforeseen deficiency in the revenue (other than revenues of any of the enterprises listed in G.S. 160A-311), when revenues actually collected or received fall below revenue estimates made in good faith in accordance with the Local Government Budget and Fiscal Control Act.
- Civil Disorders - To meet the cost of additional law-enforcement personnel and equipment that may be required to suppress riots or other civil disorders involving an extraordinary breach of law and order within the jurisdiction of the city.

For other statutory purposes, the combined property tax rate may not exceed $1.50 on the $100 appraised value of property subject to taxation. Pursuant to a referendum, a city may also levy property taxes for any purpose authorized by its charter or general law to appropriate money. Taxes approved by vote of the people are not counted for purposes of the above rate limitation.

BACKGROUND: The Town of Badin was incorporated in 1989, and the initial property tax rate could not exceed $.21 per $100 valuation. On July 1, 1992, the Charter was changed to authorize the Town Council to set an ad valorem tax rate in excess of $.25 per $100 valuation only if the rate met both of the following conditions:

1. The percentage increase in the rate from the previous year's rate does not exceed the percentage increase in the Implicit GNP Price Deflator over the preceding year.
2. The increase in the rate does not exceed 10% of the rate that applied in the next preceding year.

On June 30, 2000, the Charter was modified so that the ad valorem rate set by the Town Council could not exceed the previous year's rate by more than 10%. (S.L. 2000-36)

BILL ANALYSIS: House Bill 1576 repeals the limit on the ad valorem tax rate enacted in S.L. 2000-36.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1589 A BILL TO BE ENTITLED AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF PRINCETON.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1589*

Short Title:	Princeton Charter Consolidation.	(Local)
Sponsors:	Representative Daughtry.	
Referred to:	Finance.	

June 10, 2002

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"THE CHARTER OF THE TOWN OF PRINCETON.

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

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

"Section 1.2. **Powers.** The Town of Princeton shall have and may exercise all of the powers, duties, rights, privileges, and immunities, which are now, or hereafter may be conferred, either expressly or by implication, upon the Town of Princeton, specifically, or upon municipal corporations, generally, by this Charter, by the North Carolina Constitution, or by general or local law.

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

"ARTICLE II. MAYOR AND BOARD OF COMMISSIONERS.

"Section 2.1. **Governing Body.** The Mayor and Board of Commissioners, elected and constituted as herein set forth, shall be the governing body of the Town. On behalf of the Town, and in conformity with applicable laws, the Mayor and Board may provide

for the exercise of all municipal powers, and shall be charged with the general government of the Town.

"Section 2.2. **Board of Commissioners; Composition; Terms of Office.** The Board of Commissioners shall be composed of four members, each of whom shall be elected for terms of four years in the manner provided by Article III of this Charter, provided, they shall serve until their successors are elected and qualified.

"Section 2.3. **Election of the Mayor; Term of Office; Duties.** The Mayor shall be elected by voters of the Town in the manner provided by Article III of this Charter for a term of two years; provided, the Mayor shall serve until his successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at all meetings of the Board of Commissioners. He shall have the right to vote only if there are equal numbers of votes in the affirmative and the negative on any matter before the Board. The Mayor shall exercise such powers and perform such duties as presently are or hereafter may be conferred upon him by the General Statutes, by this Charter, and by the ordinances of the Town.

"Section 2.4 **Mayor Pro Tempore.** In accordance with applicable State laws, the Board of Commissioners shall appoint one of its members to act as Mayor Pro Tempore to perform the duties of the Mayor in the Mayor's absence or disability. In the event of a vacancy in the office of Mayor, the Mayor Pro Tempore shall perform the duties of the Mayor until the vacancy is filled. The Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Board.

"ARTICLE III. ELECTIONS.

"Section 3. 1. **Regular Municipal Elections; Conduct and Method of Election.** Regular municipal elections shall be held in the Town every two years in odd-numbered years, and shall be conducted in accordance with the uniform municipal election laws of North Carolina. The Mayor and members of the Board of Commissioners shall be elected according to the nonpartisan plurality method of election, as provided by G.S. 164-292.

"Section 3.2. **Election of the Board of Commissioners; Election of Mayor.** At the regular municipal election in 2003 and every two years thereafter, there shall be elected two Commissioners and a Mayor to fill the seats of the Commissioners and Mayor whose terms are then expiring.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the Mayor-Board of Commissioners form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Attorney.** The Board of Commissioners shall appoint a Town Attorney who shall be licensed to engage in the practice of law in the State of North Carolina. It shall be the duty of the Town Attorney to prosecute and defend suits against the Town and to advise the Mayor, Board of Commissioners and other Town officials with respect to the affairs of the Town.

"Section 4.3. **Town Clerk**. The Board of Commissioners shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain in a safe place all

records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Board of Commissioners may direct.

"Section 4.4. **Town Tax Collector.** The Board of Commissioners shall appoint a Town Tax Collector to collect all taxes, licenses, fees, and other moneys belonging to the Town, subject to the General Statutes, the provisions of this Charter and the ordinances of the Town. The Town Tax Collector shall diligently comply with and enforce all the laws of North Carolina relating to the collection of taxes by municipalities.

"Section 4.5. **Town Finance Officer.** The Board of Commissioners shall appoint a Town Treasurer or Finance Officer to perform the duties of the finance officer as required by the Local Government Budget and Fiscal Control Act, and to perform such other duties as may be required by the Board.

"Section 4.6. **Consolidation of Functions.** The Board of Commissioners may consolidate any two or more positions of Town Clerk, Town Tax Collector, and Town Finance Officer, or may assign the functions of any one or more of these positions to the holder or holders of any other of these positions, subject to the Local Government Budget and Fiscal Control Act.

"Section 4.7. **Other Administrative Officers and Employees.** Consistent with applicable State laws, the Board of Commissioners may establish other positions, provide for the appointment of other administrative officers and employees, and generally organize the Town government in order to promote the orderly and efficient administration of the affairs of the Town."

SECTION 2. The purpose of this act is to revise the Charter of the Town of Princeton and to consolidate herein certain acts concerning the property, affairs, and government of the Town.

SECTION 3. The following acts or portions of acts, having served the purposes for which they were enacted, or having been consolidated into this act, are hereby repealed:

Chapter 161, Private Laws of 1860-61
Chapter 19, Private Laws of 1872-73
Chapter 113, Private Laws of 1873-74
Chapter 234, Private Laws of 1923
Chapter 486, Session Laws of 1951
Chapter 150, Session Laws of 1955
Chapter 1289, Session Laws of 1957
Chapter 1025, Session Laws of 1961
Chapter 356, Session Laws of 1967.

SECTION 4. No provision of this act is intended, nor shall be construed, to affect in any way, any rights or interests (whether public or private):

(1) Now vested or accrued, in whole or in part, the validity of which might be sustained or preserved by reference to any provisions of law repealed by this act;

(2) Derived from, or which might be sustained or preserved in reliance upon, action heretofore taken pursuant to or within the scope of any provisions of law repealed by this act.

SECTION 5. No law heretofore repealed expressly or by implication, and no law granting authority which has been exhausted, shall be revived by:

(1) The repeal herein of any act repealing such law, or

(2) Any provision of this act that disclaims an intention to repeal or affect enumerated or designated laws.

SECTION 6. All existing ordinances and resolutions of the Town of Princeton and all existing rules or regulations of departments or agencies of the Town of Princeton, not inconsistent with the provisions of this act, shall continue in full force and effect until repealed, modified, or amended.

SECTION 7. No action or proceeding of any nature (whether civil or criminal, judicial or administrative, or otherwise) pending at the effective date of this act by or against the Town of Princeton or any of its departments or agencies, shall be abated or otherwise affected by the adoption of this act.

SECTION 8. If any of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, repealed or superseded, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most nearly corresponds to the statutory provision, which is repealed or superseded.

SECTION 10. This act is effective when it becomes law.

HOUSE BILL 1589:
Princeton Charter Consolidation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Daughtry
Date:	July 8, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1589 is a local bill that revises and consolidates the charter of the Town of Princeton located in Johnston County. Senate Bill 1310, sponsored by Sen. Harris, is a companion bill. SB 1310 is in Senate State and Local Government.

BILL ANALYSIS: House Bill 1589 revises and consolidates the charter of the Town of Princeton. The governing body of the Town is a Mayor and Board of Commissioners (4 members). The Mayor may vote only to break any tie on a matter before the Board. The Board shall appoint a town attorney, town clerk, town tax collector, and town finance officer. The Board may consolidate any two or more positions of town clerk, town tax collector, and town finance officer.

House Bill 1589 also repeals certain local acts that have served their purpose or that have been consolidated into the Bill.

House Bill 1589 is effective when it becomes law.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1646 A BILL TO BE ENTITLED AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF ROWLAND.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1646

Short Title:	Rowland Annexation.	(Local)
Sponsors:	Representatives Bonner; Yongue and Sutton.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF ROWLAND.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Rowland are extended to include the following:

North Carolina State Highway 130: BEGINNING at the southeastern limits of the Town of Rowland and including all of the right-of-way of North Carolina State Highway 130 from the town limits in a southeasterly direction approximately 1.0 mile to the line perpendicular to the right-of-way of North Carolina State Highway 130 which includes the intersection of the northeastern right-of-way of North Carolina State Highway 130 and the southeastern right-of-way of Iona Church Road; thence from northeastern right-of-way of North Carolina State Highway 130 and including all of the right-of-way of Iona Church Road in a northeasterly direction 300 feet.

Interstate 95: Beginning at the northeastern right-of-way of North Carolina State Highway 130 and including all of the right-of-way of I-95 approximately 2.4 miles in a southwesterly direction to the South Carolina State Line.

Interstate 95 Ramps: All of the rights-of-way for exit and entrance ramps for Interstate 95 just north of the South Carolina State Line and at North Carolina State Highway 130.

United States Highways 301 and 501: Beginning at the South Carolina State Line and including all of the right-of-way of United States Highways 301 and 501 (a combined right-of-way) in a northerly direction approximately 2.1 miles to the southeastern limits of the Town of Rowland.

SECTION 2. This added territory is exempt from the requirements of Section 1.3 of the Charter of the Town of Rowland relating to mapping and recording of a map with various officials. However, a "Notice of Annexation" shall be recorded in the office of the Register of Deeds of Robeson County, which notice shall include the language of Section 1 of this act and a reference to this act.

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

HOUSE BILL 1646:
Rowland Annexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Bonner
Date:	July 8, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: HB 1646 is a local bill that authorizes the annexation of certain described property (portions of State and U.S. highways) to the corporate limits of the Town of Rowland. This annexed area will be exempt from the provisions in the Town Charter requiring changes to the official map and recording of the map with various officials.

CURRENT LAW: Annexation is one method that a town may employ to extend its corporate limits, and the process must be done in accordance with Article 4A of Chapter 160A of the General Statutes. Annexation may be either voluntary or involuntary. A voluntary annexation requires that the governing board of a municipality pass an ordinance upon presentation of a petition signed by the owners of all real property within the area to be annexed. An involuntary annexation requires, among other things, that the property meet certain characteristics:

- The area proposed to be annexed must be adjacent or contiguous to the municipality's boundaries;
- At least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary; and
- No part of the area may be included within the boundary of another incorporated municipality.

In addition to the requirements concerning location of the area in relation to the municipality's existing boundaries, the area must also be "developed for urban purposes" by meeting one of several standards concerning population, density, and development.

If the property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: House Bill 1646 authorizes the Town of Rowland to annex portions of NC State Highway 130, Interstate 95, Interstate 95 ramps, and US Highways 301 and 501. The Town wants authority to pursue violators on these roads. The annexed property will be exempt from the portion of the Town Charter that requires the official map to be altered to show the annexed area and copies to be filed with the Secretary of State, the Robeson County Register of Deeds, and the appropriate board of elections. However, the Town must record a "Notice of Annexation" with the Robeson County Register of Deeds. The Notice must include the description of the annexed property as set out in Section 1 of HB 1646.

MINUTES

HOUSE COMMITTEE ON FINANCE
July 16, 2002

The House Committee on Finance met at 8:30 a.m. on Tuesday, July 16, 2002 in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Earle, and Cunningham. The following Sergeant-at-Arms were present: Bob Fowler, Bill Freeman, Dusty Rhoades, and Shannon Batten. Staff persons present included: Cindy Avrette, Trina Griffin, Mary Shuping, Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, Martha Harris, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Visitor Registration Sheet and Agenda are attached and incorporated into the minutes as **Attachments 1 and 2**.

Representative Wainwright called the meeting to order and recognized the Pages, Kevin Kelley, Daniel Hurley, Matt Goodwin, and Jonathan Hannah. The following bills were considered.

Chairman Wainwright recognized the sponsor, Representative Redwine, to explain **HB 1668, A BILL TO BE ENTITLED AN ACT TO MODIFY THE SOUTHPORT OCCUPANCY TAX.** Representative Jarrell moved for a favorable report for HB 1668. The bill was given a favorable report. The Committee Report, Bill, and Bill Analysis are attached and included in **Attachment 3**.

Representative Cox was recognized to explain **HB 1661, A BILL TO BE ENTITLED AN ACT TO ALLOW THE COUNTY OF LEE TO CONVEY THE GOLDEN POULTRY/GOLD KIST WATER PLANT AT PRIVATE SALE.** Representative Womble made a motion to bring the Proposed Committee Substitute (PCS) before the committee for discussion. Representative Womble also moved for a favorable report to the Proposed Committee Substitute. The motion passed and the Proposed Committee Substitute was given a favorable report, and an unfavorable report was given to the original bill. The Committee Report, PCS, Original Bill, and Bill Analysis are attached and included in **Attachment 4**.

Representative Allred was recognized to explain **HB 1745, A BILL TO BE ENTITLED AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES.** Representative Decker moved for a favorable report of

the bill. The bill was given a favorable report. The Committee Report, Bill, and Bill Analysis are attached and included in **Attachment 5**

Staff Counsel, Cindy Avrette, was recognized to explain **SB 1132, A BILL TO BE ENTITLED AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE TOWN OF ELLENBORO.** Representative Womble moved for a favorable report of the bill. The bill was given a favorable report. The Committee Report, Bill, and Bill Analysis are attached and included in **Attachment 6**.

Representative Mark Hilton was recognized to present, for Senator Dalton, **SB 1300, A BILL TO BE ENTITLED AN ACT CONCERNING A VOLUNTARY SATELLITE ANNEXATION OF CERTAIN DESCRIBED PROPERTY BY THE CITY OF NEWTON.** Representative McMahan moved for a favorable report of the bill. The bill was given a favorable report. The Committee Report, Bill, and Bill Analysis are attached and included in **Attachment 7**.

Representative Luebke was recognized to present, for Senator Gulley, **SB 1357, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO DURHAM COUNTY OCCUPANCY TAX PROVISIONS.** Representative Luebke moved for a favorable report of the bill. The bill was given a favorable report. The Committee Report, Bill, and Bill Analysis are attached and included in **Attachment 8**.

Chairman Wainwright recognized and welcomed a delegation from the Kingdom of Morocco, which included local elected officials and one member of the National Parliament.

The final bill before the committee was **HB 1633, A BILL TO BE ENTITLED AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX.** An announcement for the inclusion of this bill on the agenda was made by Representative Luebke, at the end of session on the previous night. Chairman Wainwright indicated that the committee would take a vote on the bill at this meeting. The Sergeant-At-Arms passed out the PCS, Bill Analysis, Fiscal Analysis, Impact of Sales Tax Chart, and an Amendment. Chairman Wainwright recognized Representatives Luebke and Baddour to explain the bill.

Representative Luebke moved for the adoption of the PCS, and it was adopted. He stated that the bill would accelerate the 2001 legislation establishing a sales tax swap by:

- Accelerating the effective date of the local option sales tax from July 1, 2003 to September 1, 2002.

- Accelerating the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.
- Providing a hold harmless for local governments for 10 years.

He further stated that local governments needed the assistance offered by this bill and recommended the bill. Representative Baddour further explained the bill and stated that he would offer an Amendment at the appropriate time.

Committee members were recognized to make comments on the bill. Representative Buchanan indicated that he could not go along with the increase in the sales tax from 6.5% to 7%. Representative Baddour responded that the 7% tax would be for one year, if the local governments decided to do it.

Representative Baddour was recognized to present his amendment. He moved to amend the bill on page 1, line 3, and page 5, lines 37-38. The amendment would provide that local revenues might not be held or impounded by the Governor. Representative Starnes asked if there was anything in the bill to prevent the Governor from taking the funds as a last resort. Martha Harris, Staff Attorney, responded that the Governor would need the approval of the General Assembly. The language prohibited the Governor from taking the funds. The amendment does not amend the constitution. Mr. Ellis Hankins, Executive Director of the League of Municipalities, spoke in support of the bill. He stated that the General Assembly should repair the level of trust between local government and the Governor. The General Assembly had the authority to place some restrictions and guidelines on the Governor. Representatives Rayfield and Starnes both stated that the language in the bill would not restrict the Governor's authority to withhold the funds. They felt a constitutional amendment was needed. Representative Baddour moved for adoption of the amendment. The amendment was adopted.

Representative Pope stated that the Chairs should not "steamroll" the bill through the committee. He suggested that the committee should come back at 1:00 p.m. to discuss the bill. He questioned what was in the second part of the package. Representative Luebke stated that no attempt was being made to entrap anyone. The second part of the bill would address corporate loopholes, the fee bill from the Senate, and IRC adjustments to federal taxes. Representative Baddour stated that the bill should be considered at this time. Chairman Wainwright stated his intent to have the committee to vote on the bill at this meeting. Representative McComas requested a fiscal note for New Hanover County before the bill was heard on the floor.

Representative Wilson offered an amendment to amend the bill on page 5, lines 33-37, by removing those lines. She stated that the tax should not be levied without a public notice and public hearing of the county's intent to a tax. She moved for its adoption and requested a roll call vote. Mr. Jim Blackburn of the North Carolina Association of County Commissioners spoke against the amendment. Mr. Ellis Hankins stated that the time of the levy was crucial. The amendment failed by a vote of 16 yes votes to 17 no votes. The Committee Assistant recorded the roll call votes for Representatives Dedmon and Edwards as "yes" votes, when their intent was to vote "no". The correction of their vote was noted on the Roll Call Vote form.

Representative Hackney moved that the Proposed Committee Substitute (PCS) for HB 1633 be rolled into a new Committee Substitute as amended, and that the amended Committee Substitute be given a favorable report; and that an unfavorable report be given to the original bill. A roll call vote was requested and the motion carried by a vote of 20 yes votes to 13 no votes. The PCS was given a favorable report. Please refer to **Attachments 9 through 14** for copies of the Committee Report, Adopted PCS, Original PCS, Bill Analysis, Fiscal Note, Baddour Amendment, Wilson Amendment, Wilson Amendment Roll Call Vote, and the Roll Call Vote for the adopted PCS.

The meeting adjourned at 9:50 a.m.

Respectfully submitted,

Blinda Edwards, Committee Assistant

Representative William Wainwright
Presiding Chair

NOTE:

The tape recorder used to record the meeting, did not function properly, and the minutes were not recorded on tape. These minutes were transcribed from notes taken during the meeting without the benefit of the recorded tape.

Attachment 1

AGENDA

House Finance Committee

July 16, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen — *Representative Paul Luebke*
Representative Charles Buchanan — *Representative William Wainwright*

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1661	Lee Water Plant Private Sale- Rep. Cox and Davis
HB 1668	Modify Southport Occupancy Tax- Rep. Redwine
HB 1745	WWII/Korean Conflict Plate Limit Removed- Rep. Allred
SB 1132	Ellenboro Deannexation- Sen. Dalton
SB 1300	Newton Voluntary Satellite Annexation- Sen. Allran
SB 1357	Amend Durham Occupancy Tax Provisions- Sen. Gulley

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

FINANCE — JULY 16, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCRA
DAVID BARNES	Parker Sprinkle
ELLIS HANKINS	NCLM
JIM HOBBS	NCHMA
Jim Blackburn	NC Assn County Commrs
Andy Romanet	NCLM
Katherine Davis	ElectriCities
Elizabeth Dalton	Bone & Associates
Jon McCoy	GOV OFFICE
CHARLES ARCHER	NCLM
PAUL STOCK	NC BANKERS ASSN.

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

JULY 16, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charlie Smith	NC Div. of Veterans Affairs
Joanne Stevens	nursing
ANN LOVE	DUNS
Sandy Sands	WCSR
Stephanie Manson	NC Assn. of REALTORS
Clifton R. Metcalf	ncce - ncve
C. Kahler	UCPNC + C2001
Bill Spencer	NCDOR
Charles Collins	11
Andy Sabol	11
Diane Jo Lowe	DMV

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

JULY 16, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Matthews	DOT - DMV
Paul Zigas	OSBM
Matt Benson	Capitol Group
Celine PETIPAS	RTI
Isabelle Barraja	RTI
BELKHIRI Abdelmajid	MOROCCO
Dr FRAIHA Mustapha	PROV. LARACHE
ALAL SAKROUHI	AGENCE URBAINE. WILAYA DE TETOUAN
~~Zekari Amzani Mohamed~~	Tetouan - Morocco
HAKIMA SENTISSI	Conseil Regional Tanger Tetouan - MAROC
Julie Robison	RTI PO 12194 RTPK, NC 27709

VISITOR REGISTRATION SHEET

FINANCE — JULY 16, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Katherine Hackney	Rep. Hackney
Sara Rains	Rep Luebke
Ademan Mehta	Rep Gibson
Ashley Huffstetler	The Capitol Group
Carole Lawler	EGHS
Leanne Winner	NCSBA
Brahim Abdelkrim	(MORROCO)
Berrada Tahar	USAID/Morocco
Robert Howard	MCFC
Henry Jones	Hooney - Raleigh
Ed Rego	N.C.A.C.C

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

JULY 16, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MICHAEL CROWELL	TOWN OF CARY
Jan Ramquist	NCATA
Ischelle BARBAJA	self, Springfield, Va.
RACHEL CONWAY	RTI visiting Moroccan delegation (11 visitors)
Lad Rhebert	CJAC
Kim Cantrell	BTC
John McMillan	MF+S PA
Paul Chessor	John Locke Foundation

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1668: A BILL TO BE ENTITLED AN ACT TO MODIFY THE SOUTHPORT OCCUPANCY TAX.

☒ 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

LOCAL BILL

ROLL CALL

H. 1668

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SOUTHPORT OCCUPANCY TAX.

Introduced by Representative(s): Redwine.

Principal Clerk's Use Only

PASSED 1st READING

JUN 13 2002

AND REFERRED TO COMMITTEE

ON Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1668

Short Title:	Modify Southport Occupancy Tax.	(Local)
Sponsors:	Representative Redwine.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE SOUTHPORT OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 639 of the 1989 Session Laws reads as rewritten:

"**Section 1.** Occupancy tax. (a) Authorization and scope. – The Southport Board of Aldermen may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the City of Southport that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and on the rental of all private residences and cottages, regardless of whether the residence or cottage is rented for less than 15 days. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. – In addition to the tax authorized by subsection (a) of this section, the Southport Board of Aldermen may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this section. The City of Southport may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the~~

~~purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the Southport tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

The tax collector may collect any unpaid taxes levied under this act through the use of attachment and garnishment proceedings as provided in G.S. 105-368 for collection of property taxes. The tax collector has the same enforcement powers concerning the tax imposed by this act as does the Secretary of Revenue in enforcing the State sales tax under G.S. 105-164.30.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Southport Board of Aldermen may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Distribution and use of tax revenue. – ~~The tax collector shall remit the proceeds of this tax to the city on a monthly basis. The funds received by the city pursuant to this act shall be used to promote tourism and economic development, for waterfront development, and for other public purposes.~~ The City of Southport shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Southport Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in Southport and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the city of administering and collecting the tax, as determined by the finance

officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a city or to attract tourists or business travelers to the city. The term includes tourism-related capital expenditures.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than two weeks after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Southport Board of Aldermen. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

SECTION 2. Chapter 639 of the 1989 Session Laws is amended by adding a new section to read:

"**Sec. 1.2.** Southport Tourism Development Authority. – When the Southport Board of Aldermen adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a city Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the city, and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the city. The Board of Aldermen shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Southport shall be the ex officio finance officer of the Authority.

"**Sec. 1.3.** Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the city, sponsor tourist-related events and activities in the city, and finance tourist-related capital projects in the city.

"Sec. 1.4. Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Southport Board of Aldermen on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require."

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

HOUSE BILL 1668:
Modify Southport Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Redwine
Date:	July 16, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1668 authorizes the city of Southport to increase its occupancy tax from 3% to 5%. The bill conforms to both the uniform provisions concerning the levy, administration, collection, and repeal of the tax found in G.S. 160A-215 and the uniform provisions concerning the use and distribution of the proceeds. The act would become effective when it becomes law.***

CURRENT LAW: The General Assembly gave Southport the authority to levy a 3% occupancy tax in 1989. The proceeds are remitted to the city on a monthly basis and must be used to promote tourism and economic development, for waterfront development, and for other public purposes. Southport is located in Brunswick County. The county currently has the authority to levy a 1% occupancy tax. Under House Bill 1668, the total occupancy tax for accommodations in Southport would be 6%.

BILL ANALYSIS: House Bill 1668 authorizes Southport to levy an additional occupancy tax of 2%. The tax may be levied only by a resolution of the Board of Aldermen after public notice and a public hearing. The bill modifies the city's *existing* authority to levy a 3% tax to conform with the uniform provisions concerning the levy, administration, collection, and repeal of the tax found in G.S. 160A-215 and the uniform provisions concerning the use and distribution of the proceeds that the House Finance Committee traditionally likes to see in the occupancy tax bills it passes. Consequently, two-thirds of the proceeds from the occupancy tax, including both the first 3% and the additional 2%, must be used to promote travel and tourism and the remainder must be used for tourism-related expenditures. The bill also establishes a Tourism Development Authority and requires the net proceeds from the occupancy tax to be remitted to it. The TDA must use at least two-thirds of the tax proceeds to promote travel and tourism and the remainder for tourism-related expenditures.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by the House Finance subcommittee in 1993. Based upon this work, the House Finance Subcommittee on Occupancy Taxes created earlier this year looked for the inclusion of the following uniform provisions in the occupancy tax bills referred to it by the House Finance Committee earlier this month:

- **Rate** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.

- **Use** – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related purposes.
- **Definitions** The term "net revenues", promote travel and tourism", and "tourism related expenditures" are defined terms.
- **Administration** – The net revenues must be administered by a local tourism promotion agency that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

There is a 32-page chart detailing the occupancy taxes authorized in North Carolina. There is also a chart detailing the amount of occupancy tax revenue collected by the various localities. These charts can be accessed on the North Carolina General Assembly's Intranet web page under "Resource Center", "Tax Center".

Attachment 4

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1661 A BILL TO BE ENTITLED AN ACT TO ALLOW THE COUNTY OF LEE TO CONVEY THE GOLDEN POULTRY/GOLD KIST WATER PLANT AT PRIVATE SALE.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1661
PROPOSED COMMITTEE SUBSTITUTE H1661-PCS4260-LA-75

Short Title: Lee County Private Sale. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COUNTY OF LEE TO CONVEY THE GOLDEN POULTRY/GOLD KIST WATER PLANT AND RIVER INTAKE FACILITY AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the County of Lee may convey at private sale any or all of its right, title, and interest to some or all of the following described property:

TRACT #1:

ALL THAT CERTAIN TRACT OF LAND, containing 10.066 acres, more or less, being a part of what was known as the "Zimmerman Farm" near the Village of Cumnock, West Sanford Township, Lee County, North Carolina, approximately eight miles northwesterly from the city limits of the City of Sanford and lying easterly from the terminus of Secondary Road No. 1401 and bounded now or formerly as follows: North, East and South by the lands of Golden Poultry Company, Inc., (formerly FCX, Inc.) and West by the lands of T.G. Proctor, Jr., (formerly Upchurch and Cooper); said tract of land being more particularly described according to a plat prepared by Ragsdale Consultants, P.A., on February 3, 1988, Revised, May 20, 1988, as follows: BEGINNING at a common corner between the lands of T. G. Proctor, Jr. described in deed recorded in Book 377, Page 462, Lee County Registry, and the lands of Golden Poultry Company, Inc., depicted on plat recorded in Plat Cabinet No. 6, Slide 89, Lee County Registry; said beginning point being designated as control corner on the aforesaid map and having the following coordinates on the N. C. State Plane Coordinate System: Y = 659,790.3440 and X = 1,930,570.6550; and running thence from said beginning point with line of division between the lands of Proctor and Golden Poultry Company, Inc., North 19 degrees 48 minutes 43 seconds West 872 feet to a point marked by an iron pipe, which point is also located South 19 degrees 48 minutes 42 seconds East 1419.05 feet from an existing iron pipe on the bank of Deep River, the

northwesterly corner of Golden Poultry Company Inc.'s tract. thence as a new line, North 71 degrees 02 minutes 18 seconds East 700.00 feet to a point marked by an iron pipe; thence as another new line, South 20 degrees 56 minutes 31 seconds East 372 feet to a point marked by an iron pipe; thence as another new line South 71 degrees 01 minute 42 seconds West 350 feet to a point marked by an iron pipe; thence as another new line, South 18 degrees 58 minutes 18 seconds East 500 feet to a point marked by an iron pipe; thence as another new line, South 71 degrees 01 minute 42 seconds West 350 feet to the point and place of BEGINNING.

TRACT #2:

BEGINNING at an iron pipe on the East side of Deep River, the Southwesterly corner of a 0.34 acre tract with the Northern Right-of-Way of a Utility and Road Easement, as shown and depicted on the map recorded in Plat Cabinet 7, Slide 16-A, Lee County Registry, and running thence from said beginning point, North 25 degrees 38 minutes 44 seconds East 150 feet to an iron pipe; thence South 74 degrees 24 minutes East 100 feet to an iron pipe; thence South 25 degrees 38 minutes 44 seconds West 150 feet to the Northern line of a 30 foot Utility and Road Easement; thence North 74 degrees 24 minutes West 100 feet to the point of BEGINNING, containing 0.34 acres, more or less.

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

=S1427

LOCAL BILL

H.B. 1661

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COUNTY OF LEE TO CONVEY THE GOLDEN POULTRY/GOLD KIST WATER PLANT AT PRIVATE SALE.

Introduced by Representative(s): Cox. +DAVIS (Primary Sponsors)

Principal Clerk's Use Only

PASSED 1st READING
JUN 13 2002
AND REFERRED TO COMMITTEE
ON..... Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

HOUSE BILL 1661

Short Title:	Lee Water Plant Private Sale.	(Local)
Sponsors:	Representatives Cox and Davis (Primary Sponsors).	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE COUNTY OF LEE TO CONVEY THE GOLDEN POULTRY/GOLD KIST WATER PLANT AT PRIVATE SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the County of Lee may convey at private sale any or all of its right, title, and interest to some or all of the following described property:

ALL THAT CERTAIN TRACT OF LAND, containing 10.066 acres, more or less, being a part of what was known as the "Zimmerman Farm" near the Village of Cumnock, West Sanford Township, Lee County, North Carolina, approximately eight miles northwesterly from the city limits of the City of Sanford and lying easterly from the terminus of Secondary Road No. 1401 and bounded now or formerly as follows: North, East and South by the lands of Golden Poultry Company, Inc., (formerly FCX, Inc.) and West by the lands of T.G. Proctor, Jr., (formerly Upchurch and Cooper); said tract of land being more particularly described according to a plat prepared by Ragsdale Consultants, P.A., on February 3, 1988, Revised, May 20, 1988, as follows: BEGINNING at a common corner between the lands of T. G. Proctor, Jr. described in deed recorded in Book 377, Page 462, Lee County Registry, and the lands of Golden Poultry Company, Inc., depicted on plat recorded in Plat Cabinet No. 6, Slide 89, Lee County Registry; said beginning point being designated as control corner on the aforesaid map and having the following coordinates on the N. C. State Plane Coordinate System: Y = 659,790.3440 and X = 1,930,570.6550; and running thence from said beginning point with line of division between the lands of Proctor and Golden Poultry Company, Inc., North 19 degrees 48 minutes 43 seconds West 872 feet to a point marked by an iron pipe, which point is also located South 19 degrees 48 minutes 42 seconds East 1419.05 feet from an existing iron pipe on the bank of Deep River, the northwesterly corner of Golden Poultry Company Inc.'s tract. thence as a new line, North 71 degrees 02 minutes 18 seconds East 700.00 feet to a point marked by an iron pipe; thence as another new line, South 20 degrees 56 minutes 31 seconds East 372 feet

to a point marked by an iron pipe; thence as another new line South 71 degrees 01 minute 42 seconds West 350 feet to a point marked by an iron pipe; thence as another new line, South 18 degrees 58 minutes 18 seconds East 500 feet to a point marked by an iron pipe; thence as another new line, South 71 degrees 01 minute 42 seconds West 350 feet to the point and place of BEGINNING.

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

HOUSE BILL 1661:
Lee County Private Sale

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Cox and Davis
Date:	July 15, 2002	**Analysis by:**	Martha Walston
Version:	Proposed Committee Sub		Committee Counsel

SUMMARY: House Bill 1661 is a local bill that authorizes Lee County to convey by private sale two described tracts of land: Tract #1 includes 10.066 acres, more or less, on which is situated a water plant that is currently servicing a poultry processing plant in the County. The water plant needs major repairs, and the bill would allow the County to convey the water plant to the poultry plant. Tract #2 is a 0.34 acre tract on which is situated a river intake facility. The 1st Edition of the Bill did not include Tract #2.

CURRENT LAW: Article 12 of Chapter 160A sets out the procedures by which cities may dispose of property. Pursuant to G.S. 153A-176, Article 12 also applies to counties. Subject to statutory limitations in Article 12, a county may dispose of property by private negotiation or sale; advertisement for sealed bids; negotiated offer, advertisement, and upset bid; public auction; or exchange. G.S. 160A-265 gives a city (or county) general statutory authority to sell or dispose of real and personal property, without regard to the method or purpose of its acquisition or its intended or actual governmental or other prior use. However, the North Carolina courts have held that general statutory authority to dispose of property is not sufficiently specific to authorize the conveyance of governmental property.

BILL ANALYSIS: House bill 1661 authorizes Lee County to convey a total of 10.1 acres at a private sale, notwithstanding Article 12 of Chapter 160A. Tract #1 of this property is a water plant constructed primarily to serve Golden Poultry, now Gold Kist, Inc., a chicken processing plant in western Lee County. In 1989, the County entered into an agreement with the chicken processing plant to furnish water to the plant for 15 years. This commitment ends April 19, 2004. During the contract period, the County created a Water and Sewer District that covers the County except for the City of Sanford, the Town of Broadway, and the West Sanford Township. The processing plant is located in the West Sanford Township. The water system for the plant is currently owned by the County and is need of major repair. In return for the sale of the property to them, the poultry processing plant has agreed to retire any obligation the County owes on the purchase of the water plant, to accept the water plant "as is", to make any necessary repairs, and to add a water tank. The individuals in the West Sanford Township will be serviced by the Water and Sewer District and will eventually be annexed to that system. Currently the County purchases water from the City of Sanford to furnish water to the individuals in the Township. The County will began to collect taxes once the property is conveyed to the processing plant.

Tract #2 of the property contains .034 acres of land that is located at the river site which houses the river intake facility.

Lee County has requested legislative authority for the sale, since the property is currently in governmental use and G.S. 160A-265 is unclear as to whether a sale of such property can be made without special legislation.

Attachment 5

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☐ Committee Substitute for
H.B. 1745 A BILL TO BE ENTITLED AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES.

☒ 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

PUBLIC BILL

ROLL CALL

1745

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES.

Introduced by Representative(s): Allred.

Ray Rapp Don Davis

Principal Clerk's Use Only

PASSED 1st READING

JUN 17 2002

AND REFERRED TO COMMITTEE

ON... Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1745

Short Title:	WWII/Korean Conflict Plate Limit Removed.	(Public)
Sponsors:	Representatives Allred; Rayfield and Davis.	
Referred to:	Finance.	

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(27b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(27b) Military Wartime Veteran. – Issuable to either a member or veteran of the armed services of the United States who served during a period of war. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. ~~The~~ Except for World War II and Korean Conflict plates, the Division may not issue a plate authorized by this subdivision unless it receives at least 300 applications for that plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.

b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.

c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.

d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.

e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.

f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal."

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

HOUSE BILL 1745:
WWII/Korean Conflict Plate Limit Removed

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Allred
Date:	July 15, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1745 would remove the requirement that the Division of Motor Vehicles receive 300 applications before a special license plate may be issued to a World War II veteran or to a Korean Conflict veteran. The Division of Motor Vehicles supports the removal of the 300-application requirement for World War II or Korean Conflict veterans.

CURRENT LAW: The General Assembly has authorized the Division of Motor Vehicles to issue many different special registration plates so long as it receives at least 300 applications for the plate. DMV has issued at least 87 special license plates. It has received requests for an additional 40 plates but has not issued those plates because it has not yet received 300 applications for them.

Last Session, the General Assembly amended G.S. 20-79.4(b)(27b) to authorize the issuance of a special license plate to a member or veteran of the armed services of the U.S. who served during one of the periods of war listed below. If the person is a veteran, he or she must have been separated from the armed services under honorable conditions. The special plate will bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for the following periods of war:

- World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.
- World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.
- The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
- The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
- Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
- Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

An applicant for a Military Wartime Veteran plate must pay the regular motor vehicle registration fee plus an additional $10 fee. The additional $10 fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $525,000 is annually appropriated to provide operating assistance for seven Visitor Centers. The Centers are located in Brunswick, Camden, Carteret, Caswell, Macon, Tyrell, and Watauga Counties.

The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Health and Human Services to promote travel accessibility for disabled persons in the State (17%).

The additional fee for some of the special plates is greater than $10. In those instances, the first $10 goes to the special registration plate fund and the remainder is to be transferred quarterly to designated beneficiaries of the additional fee amount.

G.S. 20-79.4(b)(31) also authorizes the issuance of a "Pearl Harbor Survivor" special plate. However, there is no requirement of 300 applications for issuance of this plate. As of July 1, 2002 there were 154 active "Pear Harbor Survivor" plates.

BILL ANALYSIS: G.S. 20-79.4(b)(27b) requires that 300 applications be received before the DMV will issue a plate for a period of war listed in subdivision (27b). Because of the advanced ages of many of the WWII and Korean Conflict veterans, it has become impossible to meet this requirement. HB 1745 would remove the 300-application requirement for veterans of these two periods of war. The DMV supports this bill.

Attachment 6

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1132 A BILL TO BE ENTITLED AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE TOWN OF ELLENBORO.

☒ 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

CAL BILL

)LL CALL

S.B. 1132

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE TOWN OF ELLENBORO.

Introduced by Senator(s) Dalton

Principal Clerk's Use Only

FILED MAY 3 0 2002

PASSED 1st READING
JUN 3 2002
AND REFERRED TO COMMITTEE
ON Finance

PASSED 2nd READING
Ayes 43 Noes 0
JUN 27 2002
AND ~~PASSED~~ Remains ON THE CALENDAR

PASSED 3rd READING
Ayes 42 Noes 0
JUL 1 2002
AND ORDERED SENT
To House of Representative

PASSED 1st READING
JUL 3 2002
AND REFERRED TO COMMITTEE
ON Finance

ıe Committee on. Finance
majority being present, having considered
is bill, recommend that it do ✓ pass.

For the Committee.

RTED FAVORABLY JUN 2 6 2002

Janet Pruitt

RECEIVED
JUL 2 2002

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

SENATE BILL 1132

Short Title:	Ellenboro Deannexation.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	Finance.	

June 3, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE AN AREA FROM THE CORPORATE LIMITS OF THE TOWN OF ELLENBORO.

Whereas, an annexation to the Town of Ellenboro occurred by legislative act in 1917;

Whereas, there is no evidence that said annexation was ever honored by the Town and there is no evidence that the residents of the area annexed have ever been billed for town taxes, nor have they paid town taxes, nor have they received any town services regarding said annexation;

Whereas, although the 1917 local act was repealed as part of the Ellenboro Charter consolidation under Chapter 425, Session Laws of 1983, that 1983 act directed that it was not to change the boundaries of the town; and

Whereas, the Town Council desires to deannex this property effective as of the year 1917 with the final effect being that this area will be treated as never having been annexed into the Town; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 178 of the Private Laws of 1917 is repealed.

SECTION 2. This act becomes effective March 5, 1917.

SENATE BILL 1132:
Ellenboro Deannexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Dalton
Date:	July 16, 2002	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 1132 is a local bill that removes certain described property from the corporate limits of the Town of Ellenboro in Rutherford County by repealing the local act that annexed the area to the Town originally in 1917.

BACKGROUND/CURRENT LAW: In 1917, the General Assembly passed a local act to extend the corporate limits of the Town of Ellenboro. Since that time, however, there has been no evidence that the town ever honored the annexation. The residents in that area have never been billed for taxes nor have they received any town services. Although the 1917 local act was repealed as part of the Ellenboro Charter consolidation in 1983, the 1983 act specified that the boundaries of the town were to remain unchanged. Thus, this area is still annexed to the Town of Ellenboro.

BILL ANALYSIS: Senate Bill 1132 removes certain described property from the Town of Ellenboro, effective March 5, 1917. The final effect of the retroactive effective date is that this area will be treated as never having been annexed into the Town.

Attachment 7

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1300 / A BILL TO BE ENTITLED AN ACT CONCERNING A VOLUNTARY SATELLITE ANNEXATION OF CERTAIN DESCRIBED PROPERTY BY THE CITY OF NEWTON.

☒ 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

CAL BILL

S.B. 1357

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO DURHAM COUNTY OCCUPANCY TAX PROVISIONS.

Introduced by Senator(s) Gulley Gulley

Principal Clerk's Use Only

FILED JUN 11 2002

PASSED 1st READING
JUN 12 2002
AND REFERRED TO COMMITTEE
ON Finance

...mittee on Finance
...ty being present, having considered
recommend that it do ✓ pass.
For the Committee.

...TED FAVORABLY JUN 26 2002

PASSED 2nd & 3rd READINGS
45-0 VV
JUN 27 2002
ORDERED SENT TO
HOUSE OF REPRESENTATIVES
Janet Pruitt

07-01-02P07:55 RCVD
JWeeks

PASSED 1st READING
JUL 2 2002
AND REFERRED TO COMMITTEE
ON Finance

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 1300

Short Title:	Newton Voluntary Satellite Annexation.	(Local)
Sponsors:	Senator Allran.	
Referred to:	Finance.	

June 10, 2002

A BILL TO BE ENTITLED

AN ACT CONCERNING A VOLUNTARY SATELLITE ANNEXATION OF CERTAIN DESCRIBED PROPERTY BY THE CITY OF NEWTON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(2) does not apply to the annexation of the following described property by the City of Newton:

BEGINNING at an existing iron pin in the southeastern comer of property owned by L. & B. Development, LLC and running thence with a property line of L & B Development, LLC South 61 degrees 34 minutes 3 7 seconds west 74.95 feet to an existing iron pin in the line of L & B Development; and running thence with a property line of L & B Development south 66 degrees 06 minutes 57 seconds west 434.25 feet to an iron pin in the line of L & B Development; and running thence with a property line of L & B Development south 55 degrees 44 minutes 03 seconds west 270.55 feet to an iron pin in the line of L & B Development; and running thence with a property line of L & B Development south 74 degrees 39 minutes 55 seconds west 232.00 feet to an iron pin in the line of L & B Development; and running thence with a property line of L & B Development north 27 degrees 19 minutes 47 seconds west 282.63 feet to an iron pin in the line of L & B Development; and running thence with a property line of L & B Development LLC north 63 degrees 58 minutes 24 seconds east 232.82 feet to an iron pin in the line of L & B Development LLC; and running thence a property line of L & B Development LLC, north 17 degrees 17 minutes 44 seconds west 215.08 feet to an iron pin in the line of L & B Development LLC; and running thence with the satellite corporate limits of the City of Newton, north 68 degrees 03 minutes 05 seconds east 153.64 feet to a point in the line of the satellite corporate limits of the City of Newton; and running thence with the satellite corporate limits of the City of Newton south 71 degrees 04 minutes 48 seconds east 60.66 feet to a point in the line of the satellite corporate limits of the City of Newton; and running thence with the satellite corporate limits of the City of Newton north 65 degrees 32 minutes 16 seconds east 222.64 feet to a point in the line of the satellite corporate limits of the City of Newton; and running

thence with the satellite corporate limits of the City of Newton south 5 1 degrees 26 minutes 3 5 seconds east 72.13 feet to a point in the line of the satellite corporate limits of the City of Newton; and running thence with the satellite corporate limits of the City of Newton north 76 degrees 23 minutes 23 seconds east 177.23 feet to a point in the line of the satellite corporate limit of the City of Newton; and running thence with the satellite corporate limits of the City of Newton south 48 degrees 34 minutes 45 seconds east 74.01 feet to a point in the satellite corporate limits of the City of Newton; and running thence with the satellite corporate limits north 85 degrees 36 minutes 14 seconds east to an iron pin in the line of L&B Development LLC; and running thence with a property line of L&B Development LLC south 13 degrees 36 minutes 37 seconds east to the point of BEGINNING.

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

SENATE BILL 1300:
Newton Voluntary Satellite Annexation

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Allran
Date:	July 16, 2002	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1300 would allow the City of Newton to voluntarily annex a described tract of land even if it is closer to the primary corporate limits of another city than to the primary corporate limits of Newton.***

CURRENT LAW AND BILL ANALYSIS:

G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

Senate Bill 1300 would provide that the 2nd requirement does not apply to the tract of land described in the bill. Thus, that tract of land could be voluntarily annexed by the City of Newton even if it is closer to the primary corporate limits of another city than it is to Newton.

Attachment 8

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1357 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO DURHAM COUNTY OCCUPANCY TAX PROVISIONS.

☒ 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

CAL BILL

S.B. 1357

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO DURHAM COUNTY OCCUPANCY TAX PROVISIONS.

Introduced by Senator(s) Gulley Gulley

Principal Clerk's Use Only

FILED JUN 11 2002

PASSED 1st READING
JUN 12 2002
AND REFERRED TO COMMITTEE
ON Finance

mittee on Finance
ity being present, having considered
recommend that it do ✓ pass.
For the Committee

BTED FAVORABLY JUN 26 2002

PASSED 2nd & 3rd READINGS
45-0 VV
JUN 27 2002
ORDERED SENT TO HOUSE OF REPRESENTATIVE
Janet Pruitt

07-01-02P07:55 RCVD
JWeeks

PASSED 1st READING
JUL 2 2002
AND REFERRED TO COMMITTEE
ON Finance

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1357

Short Title:	Amend Durham Occupancy Tax Provisions.	(Local)
Sponsors:	Senator Gulley.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO DURHAM COUNTY OCCUPANCY TAX PROVISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7(a) of S.L. 2001-480 reads as rewritten:

"**SECTION 7.(a)** If a plan for financing a Performing Arts Theater has not been approved by the Durham City Council and has been disapproved by the Durham County Commissioners within 42 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described under Section 6(c) of this act and the levy of the one percent (1%) tax described in this subsection are repealed on the first day of the second month following the 42-month period.

If construction on the Performing Arts Theater has not begun within 42 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, the county's authority to levy the one percent (1%) tax described in Section 6(c) of this act and the levy of the one percent (1%) tax described in Section 6(c) of this act are repealed on the first day of the second month following the 42-month period.

It is the goal of the General Assembly that a plan for financing the Performing Arts Theater shall be adopted within 12 months after the levy of the one percent (1%) tax authorized under Section 6(c) of this act, and construction of the Performing Arts Theater shall begin within 24 months of the levy of the one percent (1%) tax described in Section 6(c) of this act.

Any funds collected but not spent before the repeal date shall be redistributed to the Durham ~~Tourism Development Authority~~Convention and Visitors Bureau to promote travel and tourism."

SECTION 2. Section 9(c) of S.L. 2001-480 reads as rewritten:

"**SECTION 9.(c)** Use of Proceeds From Additional Two Percent (2%) Tax. – Durham County shall, on a monthly basis, remit the net proceeds of the tax levied under

Section 6(b) of this act to the Durham ~~Tourism Development Authority created by~~Convention and Visitors Bureau as set out in Section 10 of this act.

The ~~Authority~~ Bureau may use the funds remitted to it under this subsection only to promote travel, tourism, and conventions in Durham County.

SECTION 3. Section 9(d) of S.L. 2001-480 reads as rewritten:

"**SECTION 9.(d)** Use of Proceeds From Additional One Percent (1%) Tax During First 24 Months. – Durham County shall, on a monthly basis, remit the net proceeds of the occupancy tax levied under Section 6(c) of this act to the Durham ~~Tourism Development Authority created by~~Convention and Visitors Bureau as set out in Section 10 of this act. During the first 24 months that the tax is levied under Section 6(c) of this act, the ~~Authority~~ Bureau shall distribute and use these net proceeds in the following priority order:

(1) To Durham County, up to the first two hundred thousand dollars ($200,000) collected to fund the development of a Cultural Arts Master Plan.

(2) The ~~Authority~~ Bureau shall use the next seven hundred thousand dollars ($700,000) collected to promote travel, tourism, and conventions in Durham County.

(3) To the City of Durham, the next two hundred forty-eight thousand dollars ($248,000) collected. The city shall use these funds for the design and engineering costs associated with the construction of a Performing Arts Theater.

(4) To Durham County, the next four hundred thousand dollars ($400,000) collected for improvements to the Museum of Life and Science. This may include the financing of debt service.

(5) To Durham County, the next five hundred thousand dollars ($500,000) collected. These funds shall be credited into an Arts Reserve Fund and used to implement the Cultural Arts Master Plan developed under subdivision (1) of this subsection.

(6) The ~~Authority~~ Bureau shall use any net proceeds collected in excess of two million forty-eight thousand dollars ($2,048,000) to promote travel, tourism, and conventions in Durham County."

SECTION 4. Section 9(e) of S.L. 2001-480 reads as rewritten:

"**SECTION 9.(e)** Use of Proceeds From Additional One Percent (1%) Tax After First 24 Months. – The net proceeds of the tax collected under Section 6(c) of this act after the first 24 months that the tax is levied shall be remitted monthly to the Durham ~~Tourism Development Authority created by~~Convention and Visitors Bureau as set out in Section 10 of this act. The ~~Authority~~ Bureau shall use and distribute these net proceeds in the following priority order:

(1) To the City of Durham, the first one million four hundred thousand dollars ($1,400,000) collected annually to finance the debt service associated with the construction of the Performing Arts Theater. Until those funds are distributed to the City of Durham for that purpose, they shall be held by the Durham ~~Tourism Development~~

~~Authority~~Convention and Visitors Bureau in a capital reserve fund as provided by Part 2 of Article 3 of Chapter 159 of the General Statutes except they may be expended as provided by the last sentence of Section 7(a) of this act if the tax is repealed as provided by Section 7(a) of this act. Any interest earned by that fund shall be credited to the fund.

(2) Thirty-two years after the levy of the tax authorized under Section 6(c) of this act, instead of the allocation under subdivision (1) of this subsection, the first one million four hundred thousand dollars ($1,400,000) collected annually shall be used by the ~~Authority~~ Bureau to promote travel and tourism or for tourism related expenditures.

(3) To Durham County, the next five hundred thousand dollars ($500,000) collected annually to be used for improvements to the Museum of Life and Science. This may include the financing of debt service. Any of these funds that are not needed for this purpose shall be returned to the ~~Authority~~ Bureau and used to promote travel and tourism.

(4) The ~~Authority~~ Bureau shall use any net proceeds in excess of that provided by subdivisions (1), (2), and (3) of this subsection to promote travel, tourism, and conventions in Durham County.

As used in this subsection, "annually" means the 12-month period beginning after the first 24 months that the tax authorized under Section 6(c) of this act is levied."

SECTION 5. Section 9(f) of S.L. 2001-480 reads as rewritten:

"**SECTION 9.(f)** Definitions. – For the purpose of this Part:

(1) "Promote travel and tourism" means to advertise or market an area or activity, to publish and distribute pamphlets and other materials, to conduct market research, and to engage in similar promotional activities that attract tourists or business travelers to the area, and also includes administrative expenses incurred in engaging in these activities.

(2) "Promote travel, tourism, and conventions" means to advertise or market an area or activity, to publish and distribute pamphlets and other materials, to conduct market research, and to engage in similar promotional activities that attract tourists, business travelers, or conventioneers to the area, and also includes administrative expenses incurred in engaging in these activities.

(3) "Tourism related expenditures" are those that, in the judgment of the Durham ~~Tourism Development Authority,~~Convention and Visitors Bureau, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in the county by attracting tourists or business travelers to the county, and includes capital expenditures related to that purpose."

SECTION 6. Section 10(a) of S.L. 2001-480 reads as rewritten:

"**SECTION 10.(a)** Establishment ~~and Membership~~ of the Durham Convention and Visitors Bureau as a Tourism Development Authority. – ~~There is created the Durham~~

~~Tourism Development Authority, which shall be a~~ The Durham Convention and Visitors Bureau, created on January 17, 1989, in an interlocal agreement between Durham County and the City of Durham to meet provisions of Chapter 969 of the 1985 Session Laws, shall act as a tourism development authority, which is a public authority under the Local Government Budget and Fiscal Control Act."

SECTION 7. Section 10(b) of S.L. 2001-480 reads as rewritten:

"**SECTION 10.(b)** ~~From March 1, 2002, through June 30, 2004, the~~The members of the board of directors of the Durham Convention and Visitors Bureau and the members of the advisory board of the Durham Convention and Visitors Bureau shall together be ~~ex officio~~the board of directors of the ~~Authority.~~Durham Convention and Visitors Bureau. The transition to a board membership which meets the criteria established in Section 10.(c) of this act shall be completed prior to July 1, 2004."

SECTION 8. Section 10(c) of S.L. 2001-480 reads as rewritten:

"**SECTION 10.(c)** ~~Beginning July 1, 2004, the~~The membership of the ~~Durham Tourism Development Authority~~board of directors of the Durham Convention and Visitors Bureau shall be as specified in an interlocal cooperation agreement between Durham County and the City of Durham. The agreement shall provide for the number of members, terms of office, who shall appoint the membership, and such other provisions as may reasonably be necessary. The interlocal agreement ~~must be entered into prior to May 1, 2002, but~~ may ~~thereafter~~ be amended as provided by its terms.

At least three-fourths of the membership of the ~~Durham Tourism Development Authority~~ Durham Convention and Visitors Bureau must be, at the time of appointment, active in the promotion of travel, tourism, or conventions in Durham County. One-third of the membership must be affiliated with organizations that collect the tax imposed by Section 6 of this act. If the interlocal cooperation agreement is terminated, the directors of the Durham Convention and Visitors Bureau shall continue to serve until the appointment of their successors pursuant to further action by the City of Durham and the County of Durham or by the General Assembly."

SECTION 9. Section 10(d) of S.L. 2001-480 reads as rewritten:

"**SECTION 10.(d)** Duties. – The ~~Authority~~ Durham Convention and Visitors Bureau shall expend the net proceeds of the taxes levied under Section 6 of this act only for the purposes provided in this act. The ~~Authority~~ Bureau shall promote travel, tourism, and conventions in the county."

SECTION 10. Section 10(e) of S.L. 2001-480 reads as rewritten:

"**SECTION 10.(e)** Reports. – The ~~Authority shall report quarterly and at the close of the fiscal year to the county board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.~~Durham Convention and Visitors Bureau shall file a copy of its audit report with the Durham County Board of Commissioners and the Durham City Council following the close of each fiscal year."

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

SENATE BILL 1357
Amend Durham Occupancy Tax Provisions

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Sen. Wib Gulley
Date:	July 16, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Staff Attorney

SUMMARY: Senate Bill 1357 makes the following changes to the Durham occupancy tax portion of HB 917, enacted last session as S.L. 2001-480:

1. Retains the name "Durham Convention and Visitors Bureau" for the administrator of the occupancy tax net proceeds. – SB 1357 provides that the current Durham Convention and Visitors Bureau (DCVB) will act as a tourism development authority but will keep the name DCVB. This should allow the DCVB to retain and use the long-standing equity in the current name, carry forward assets and liabilities, minimize administrative changes such as taxpayer ID numbers, IRS designations, clauses in documents, and alleviate the expense of two audits. S.L. 2001-480 provides for the proceeds of the additional 2% occupancy tax and the additional 1% occupancy tax to be remitted to the Durham Tourism Development Authority (TDA). Prior to S.L. 2001-480, the additional 2% occupancy tax was remitted to the DCVB. Sections 1 through 5 of the Bill are merely conforming changes.
2. Clarifies that the transition of the make-up of the board of the DCVB may begin prior to July 1, 2004 - S.L. 2001-480 provides that from March 1, 2002 through June 30, 2004, members of the board of directors of the DCVB and the members of the advisory board of the DCVB are together ex-officio the board of directors of the TDA, and that beginning on July 1, 2004, the membership of the TDA will be as specified in an interlocal cooperation agreement between Durham County and the City of Durham. The Bill provides that the transition of the Board's membership must be completed prior to July 1, 2004. This clarification was made to smooth the transition.
3. Provides for continuation of the DCVB if the interlocal cooperation agreement is terminated - The Bill provides that the directors of the DCVB will continue to serve until appointment of their successors by authority of the General Assembly or of the City of Durham and the County of Durham. S.L. 2001-480 does not address this issue.
4. Amends the reporting requirements - S.L. 2001-480 requires the TDA to report quarterly and at the close of the fiscal year to the county board of commissioners. The Bill requires the DCVB to file its audit report with the county board of commissioners and the city council following the close of each fiscal year, as was the practice prior to S.L. 2001-480.

7/16

Attachment 9

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1633 A BILL TO BE ENTITLED AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX.

☐ 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

Final Adopted pcs

Attachment 10

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 1633
PROPOSED COMMITTEE SUBSTITUTE H1633-PCS4259-LYx-39

Short Title: Accelerate Local Option Sales Tax. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX AND TO MAKE CONFORMING AND TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~September 1, 2002."

SECTION 2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~'in addition to all current State and local sales and use taxes.' "

SECTION 3.(a) G.S. 105-520 reads as rewritten:

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month.~~quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified

to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each ~~month~~ quarter between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a ~~month~~ quarter if it is not entitled to a distribution under G.S. 105-501 for the same ~~month.~~quarter."

SECTION 3.(b) This section is repealed effective July 1, 2003.

SECTION 4.(a) G.S. 105-521 reads as rewritten:

"**§ 105-521. Transitional local government hold harmless.**

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

(1) Local government. – A county or municipality that received a distribution of local sales taxes in the most recent fiscal year for which a local sales tax share has been calculated.

(2) Local sales tax share. – A local government's percentage share of the two-cent (2¢) sales taxes distributed during the most recent fiscal year for which data are available.

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections.

(4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax authorized in Article 39 of this Chapter and in Chapter 1096 of the 1967 Session Laws, the first one-half cent (½¢) local sales and use tax authorized in Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax authorized in Article 42 of this Chapter.

(b) ~~Distributions.~~ 2002-2003 Distribution. – On or before September 15, 2002, the Secretary must multiply each local government's local sales tax share by the sum of two hundred seventy-eight million seven hundred eighty-five thousand six hundred dollars ($278,785,600). If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(c) Subsequent Distributions. – On or before September 15, 2003, and each September 15 thereafter, the Secretary must multiply each local government's local sales tax share by the estimated amount that all local governments would be expected to receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter, the Office of State Budget and Management and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections.

~~(c)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this section from sales and use tax collections under Article 5 of this Chapter.

~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee by January 31, ~~2004,~~2003, and each January 31 thereafter, the amount distributed under this section for the current fiscal year."

SECTION 4.(b) G.S. 105-521 is repealed effective July 1, 2012.

SECTION 5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities shall be the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary shall then distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same

fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~September 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective September 1, 2002, the county must notify the Secretary on or before August 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days' advance notice of the tax levy.

For taxes ~~levied on or~~that are to become effective after January 1, ~~2004~~,2003, the provisions of G.S. 105-466(c) apply."

SECTION 8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 9. Notwithstanding any other provision of law, for the month of September 2002, the administration and distribution of taxes collected under Article 44 of Chapter 105 of the General Statutes shall be in accordance with this section. For that month, the Secretary of Revenue shall create a separate account for the collection of taxes under Article 44 of Chapter 105 of the General Statutes. In that month, retailers shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a form separate from that on which the retailer reports other sales and use taxes collected. In that month, the Secretary shall allocate to each county that has imposed a tax under Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax collected under that Article. A county's allocation shall be determined by multiplying the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes for that month by a fraction. The numerator of the fraction is the amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to the county. The denominator of the fraction is the total amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to all counties that have imposed a tax under Article 44 of Chapter 105 of the General Statutes. The Secretary shall distribute these taxes at the end of the quarter in accordance with G.S. 105-520(c).

SECTION 10. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five

thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 12.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article shall be known as the '~~Local~~ First One-Cent (1¢) Local Government Sales and Use Tax ~~Act.~~'Act."

SECTION 13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article shall be known as the ~~Additional Supplemental~~Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 15. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes without giving at least 10 days' public notice of its intent to adopt the resolution and without holding a public hearing on the issue of adopting the resolution.

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

PUBLIC BILL

ROLL CALL

1633

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX.

Introduced by Representative(s): Tucker.

Russell Tucker / Gibson

Principal Clerk's Use Only

PASSED 1st READING

JUN 13 2002

AND REFERRED TO COMMITTEE

ON Finance

HOUSE BILL 1633:
Accelerate Local Option Sales Tax

BILL ANALYSIS

Committee: House
Date: July 17, 2002
Version: 2nd

Sponsor:
Analysis by: Finance Team

SUMMARY: Sections 1 through 15 of the bill accelerate the 2001 legislation establishing a sales tax swap, as follows:

- **Accelerates the effective date of the local option sales tax from July 1, 2003, to September 1, 2002.**
- **Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.**
- **Provides a hold harmless for local governments for 10 years.**

- **Sections 15.1 through 15.7 of the bill seek to secure local revenues in two ways:**
  - **They prohibit the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.**
  - **They restrict the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized by an act of the General Assembly.**

Local Option Sales Tax. – The proposed committee substitute for House Bill 1633 accelerates many of the provisions enacted last session. Under the bill, counties are authorized to levy an additional half-cent local sales tax effective as early as September 1, 2002. If counties levy the tax, the combined State and local sales tax rate would be 7% from September 2002 until July 1, 2003; at that time the State's half-cent tax sunsets and the combined rate would drop to 6½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax without a public hearing.
- It would allow the counties to enact the tax with only a 15-day notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would modify the local tax distribution formula for the first month (September).

- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Like the existing State sales tax, the new half-cent local sales tax would not apply to food.[1] Unlike the tax authorized last year, this local sales tax could be enacted without a public hearing if the resolution becomes effective on or before January 1, 2003. A county may still choose to submit the question to the voters in a special election held after 30 days' public notice. If a county chooses to submit the question to the voters and the voters reject the tax levy, the county may not enact the tax for at least two years.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. For the tax to become effective September 1, 2002, a county must notify the Secretary of Revenue of the tax's imposition by August 15, 2002. If the tax is to become effective on any other date on or before January 1, 2003, the county must give the Secretary 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are re-instated.

Beginning October 1, 2002, the net proceeds of the tax would be allocated among the counties as provided in the legislation enacted last year: one-half would be allocated on a point-of-origin basis and one-half would be allocated on a per capita basis.[2] However, for the month September 2002, the tax revenues would be placed in a separate account and allocated to the taxing counties in proportion to each county's respective share of the current two-cent distribution for the first quarter of the 2002-03 fiscal year. Each county's allocation would then be divided between the county and the municipalities in the county using the

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[1] The current two-cent local sales tax applies to food.

[2] Per capita distribution of a local tax probably violates the law of the land clause of the North Carolina Constitution, the uniformity requirements of the North Carolina Constitution, or both. The law of the land clause, which is equivalent to the due process clause of the federal constitution, prohibits the levying of a tax on one tax district for the benefit of another tax district. A local option sales tax with per capita distribution is such a tax: it is a county tax, levied by the board of county commissioners, on transactions within the county. The tax proceeds belong to the county; the constitution does not permit the county or the State to use these tax proceeds except for the benefit of the county. Distributing the county's tax proceeds throughout the State based on population violates the due process rights of the county's taxpayers. If the Statewide local option sales tax Article is viewed as a State tax for the benefit of all counties that choose to participate, it violates the uniformity requirement of Section 2 of Article V of the North Carolina Constitution, as interpreted by the North Carolina Supreme Court.

same formula by which the existing local sales taxes are divided in that county.[3] As with the existing local sales taxes, the State's costs of collecting and administering the new tax come from the local tax proceeds.

Local Government Reimbursements. - Last session, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002. State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

Local Government Hold Harmless. - Last session, the General Assembly provided an annual hold-harmless distribution from the State's General Fund to counties and cities to ensure that none of them would lose money when the local government reimbursements repealed were netted against the estimated proceeds of the sales tax if it were levied in each county as of July 1, 2003. This year, the Governor's budget provides for the repeal of the reimbursements but it does not provide for any hold harmless distributions. This bill proposes an acceleration of the same hold harmless provision in last year's legislation with one major exception: the hold harmless payments would end on July 1, 2012.

Under the hold harmless distribution in this bill, a county or city would receive a distribution if the county's or city's estimated proceeds of a half-cent tax would be less than 100% of the amount it would have gotten under the repealed reimbursements. The distribution amount would be the difference between the two. If a county's or city's estimated gain from the half-cent tax equals or exceeds 100% of its repealed reimbursement amount, it does not receive a hold harmless payment from the State. The hold harmless payment is the same whether or not the new tax is levied in the county. The Department of Revenue will make the hold harmless distribution annually, drawing the funds from State sales tax collections. The hold harmless payments must be made by September 15 of each year, beginning in 2002, and ending after the 2011 payment.

Secure Local Revenues. - Sections 15.1 through 15.7 of the bill have already passed the House as House Bill 1490. Sections 15.1 through 15.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as

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[3] The sales tax revenues are distributed between a county and its municipalities on either a per capita basis or an ad valorem basis. The county decides which distribution method it will use. The method may be changed each year.

distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

Section 15.1 - Beer and wine tax.

Section 15.2 - Franchise gross receipts tax.

Section 15.3 - Piped natural gas tax.

Section 15.4 - Sales tax on telecommunications.

Section 15.5 - Powell Bill funds.

Section 15.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, these sections would expressly state that the Governor may not reduce or withhold these distributions.

Section 15.7 amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

Org. PCS Morning Mtg.

GENERAL ASSEMBLY OF NORTH CAROLINA **Attachment 11**

SESSION 2001

H D

HOUSE BILL 1633
PROPOSED COMMITTEE SUBSTITUTE H1633-PCS7393-LYx-42

Short Title: Accelerate Local Option Sales Tax. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX, TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR, AND TO MAKE CONFORMING AND TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~September 1, 2002."

SECTION 2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

"[ ] FOR [ ] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~"in addition to all current State and local sales and use taxes." "

SECTION 3.(a) G.S. 105-520 reads as rewritten:

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month.~~quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties

on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each ~~month~~ quarter between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a ~~month~~ quarter if it is not entitled to a distribution under G.S. 105-501 for the same ~~month.~~quarter."

SECTION 3.(b) This section is repealed effective July 1, 2003.

SECTION 4.(a) G.S. 105-521 reads as rewritten:

"**§ 105-521. Transitional local government hold harmless.**

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

(1) Local government. – A county or municipality that received a distribution of local sales taxes in the most recent fiscal year for which a local sales tax share has been calculated.

(2) Local sales tax share. – A local government"s percentage share of the two-cent (2¢) sales taxes distributed during the most recent fiscal year for which data are available.

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections.

(4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax authorized in Article 39 of this Chapter and in Chapter 1096 of the 1967 Session Laws, the first one-half cent (½¢) local sales and use tax authorized in Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax authorized in Article 42 of this Chapter.

(b) ~~Distributions.~~ 2002-2003 Distribution. – On or before September 15, 2002, the Secretary must multiply each local government"s local sales tax share by the sum of two hundred seventy-eight million seven hundred eighty-five thousand six hundred dollars ($278,785,600). If the resulting amount is less than one hundred percent (100%) of the local government"s repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(c) Subsequent Distributions. – On or before September 15, 2003, and each September 15 thereafter, the Secretary must multiply each local government"s local sales tax share by the estimated amount that all local governments would be expected to receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government"s repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter, the Office of State Budget and Management and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections.

~~(c)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this section from sales and use tax collections under Article 5 of this Chapter.

~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee by January 31, ~~2004,~~2003, and each January 31 thereafter, the amount distributed under this section for the current fiscal year."

SECTION 4.(b) G.S. 105-521 is repealed effective July 1, 2012.

SECTION 5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities shall be the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary shall then distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance"s adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer"s liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same

fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~September 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective September 1, 2002, the county must notify the Secretary on or before August 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days" advance notice of the tax levy.

For taxes ~~levied on or~~that are to become effective after January 1, ~~2004~~,2003, the provisions of G.S. 105-466(c) apply."

SECTION 8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 9. Notwithstanding any other provision of law, for the month of September 2002, the administration and distribution of taxes collected under Article 44 of Chapter 105 of the General Statutes shall be in accordance with this section. For that month, the Secretary of Revenue shall create a separate account for the collection of taxes under Article 44 of Chapter 105 of the General Statutes. In that month, retailers shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a form separate from that on which the retailer reports other sales and use taxes collected. In that month, the Secretary shall allocate to each county that has imposed a tax under Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax collected under that Article. A county"s allocation shall be determined by multiplying the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes for that month by a fraction. The numerator of the fraction is the amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to the county. The denominator of the fraction is the total amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to all counties that have imposed a tax under Article 44 of Chapter 105 of the General Statutes. The Secretary shall distribute these taxes at the end of the quarter in accordance with G.S. 105-520(c).

SECTION 10. To the extent the Department of Revenue"s nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five

thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 12.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article shall be known as the "~~Local~~ First One-Cent (1¢) Local Government Sales and Use Tax ~~Act.~~"Act."

SECTION 13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article shall be known as the ~~Additional Supplemental~~Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 15. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes without giving at least 10 days" public notice of its intent to adopt the resolution and without holding a public hearing on the issue of adopting the resolution.

SECTION 15.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city"s share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city"s hold-back amount and one-fourth of the city"s proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds

and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

HOUSE BILL 1633 (PCS): Accelerate Local Option Sales Tax

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	
Date:	July 15, 2002	**Analysis by:**	Finance Team
Version:	CSLYx-39		

SUMMARY: Accelerates the 2001 legislation establishing a sales tax swap, as follows:

- **Accelerates the effective date of the local option sales tax from July 1, 2003, to September 1, 2002.**
- **Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.**
- **Provides a hold harmless for local governments for 10 years.**

Local Option Sales Tax. - The proposed committee substitute for House Bill 1633 accelerates many of the provisions enacted last session. Under the bill, counties are authorized to levy an additional half-cent local sales tax effective as early as September 1, 2002. If counties levy the tax, the combined State and local sales tax rate would be 7% from September 2002 until July 1, 2003; at that time the State's half-cent tax sunsets and the combined rate would drop to 6½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax without a public hearing.
- It would allow the counties to enact the tax with only a 15-day notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would modify the local tax distribution formula for the first month (September).
- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.[1]

[1] The proposed committee substitute differs from the original bill as follows: (1) It changes the local sales tax acceleration from August 1 to September 1, 2002. (2) Its adds the provision authorizing local governments to reduce property tax rates after July 1 of a fiscal year to account for unanticipated revenues. This provision was introduced by Rep. Baker as House Bill 1485 and was part of the Senate's tax package, Senate Bill 1292, 3rd Edition. (3) It adds

Like the existing State sales tax, the new half-cent local sales tax would not apply to food.[2] Unlike the tax authorized last year, this local sales tax could be enacted without a public hearing if the resolution becomes effective on or before January 1, 2003. A county may still choose to submit the question to the voters in a special election held after 30 days' public notice. If a county chooses to submit the question to the voters and the voters reject the tax levy, the county may not enact the tax for at least two years.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. For the tax to become effective September 1, 2002, a county must notify the Secretary of Revenue of the tax's imposition by August 15, 2002. If the tax is to become effective on any other date on or before January 1, 2003, the county must give the Secretary 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are re-instated.

Beginning October 1, 2002, the net proceeds of the tax would be allocated among the counties as provided in the legislation enacted last year: one-half would be allocated on a point-of-origin basis and one-half would be allocated on a per capita basis.[3] However, for the month September 2002, the tax revenues would be placed in a separate account and allocated to the taxing counties in proportion to each county's respective share of the current two-cent distribution for the first quarter of the 2002-03 fiscal year. Each county's allocation would then be divided between the county and the municipalities in the county using the same formula by which the existing local sales taxes are divided in that county.[4] As with the existing local sales taxes, the State's costs of collecting and administering the new tax come from the local tax proceeds.

Local Government Reimbursements. - Last session, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the

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the provisions regarding the first month distribution, the Department of Revenue's excess costs, and the bidding exemption. (4) It makes technical and conforming changes.

[2] The current two-cent local sales tax applies to food.

[3] Per capita distribution of a local tax probably violates the law of the land clause of the North Carolina Constitution, the uniformity requirements of the North Carolina Constitution, or both. The law of the land clause, which is equivalent to the due process clause of the federal constitution, prohibits the levying of a tax on one tax district for the benefit of another tax district. A local option sales tax with per capita distribution is such a tax: it is a county tax, levied by the board of county commissioners, on transactions within the county. The tax proceeds belong to the county; the constitution does not permit the county or the State to use these tax proceeds except for the benefit of the county. Distributing the county's tax proceeds throughout the State based on population violates the due process rights of the county's taxpayers. If the Statewide local option sales tax Article is viewed as a State tax for the benefit of all counties that choose to participate, it violates the uniformity requirement of Section 2 of Article V of the North Carolina Constitution, as interpreted by the North Carolina Supreme Court.

[4] The sales tax revenues are distributed between a county and its municipalities on either a per capita basis or an ad valorem basis. The county decides which distribution method it will use. The method may be changed each year.

2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002. State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

Local Government Hold Harmless. - Last session, the General Assembly provided an annual hold-harmless distribution from the State's General Fund to counties and cities to ensure that none of them would lose money when the local government reimbursements repealed were netted against the estimated proceeds of the sales tax if it were levied in each county as of July 1, 2003. This year, the Governor's budget provides for the repeal of the reimbursements but it does not provide for any hold harmless distributions. This bill proposes an acceleration of the same hold harmless provision in last year's legislation with one major exception: the hold harmless payments would end on July 1, 2012.

Under the hold harmless distribution in this bill, a county or city would receive a distribution if the county's or city's estimated proceeds of a half-cent tax would be less than 100% of the amount it would have gotten under the repealed reimbursements. The distribution amount would be the difference between the two. If a county's or city's estimated gain from the half-cent tax equals or exceeds 100% of its repealed reimbursement amount, it does not receive a hold harmless payment from the State. The hold harmless payment is the same whether or not the new tax is levied in the county. The Department of Revenue will make the hold harmless distribution annually, drawing the funds from State sales tax collections. The hold harmless payments must be made by September 15 of each year, beginning in 2002, and ending after the 2011 payment.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1633 PCS

DRAFT

SHORT TITLE: **Accelerate Local Option Sales Tax**

SPONSOR(S):

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
-Local Reimbursements	333.4				
-Local Hold Harmless	(81.2)				
Net to General Fund	**252.2**				
Local Governments					
-½ Cent Sales Tax*	278.8				
-Local Reimbursements	(333.4)				
-Local Hold Harmless	81.2				
- DOR Administration	(0.3)				
Net to Local Governments	**26.3**				
EXPENDITURES					
General Fund					
Department of Revenue**	.3				

*Assumes 100 counties enact tax in August 2003

**Up to $275,000 can be withheld from local sales tax collections for implementing half-cent local option.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Department of Revenue, Local Governments.

EFFECTIVE DATE: Section 1 (Local Sales Tax) September 1, 2002, Section 5 (Use Tax Distribution) taxable years beginning on or after January 1, 2002, Section 8 (Repeal Reimbursements) July 1, 2002. The remainder becomes effective when law.

BILL SUMMARY: Section 1 of the bill authorizes local county commissioners to levy an additional ½ cent local sales tax, effective August 1, 2002. This tax would not apply to food. Section 2 makes conforming changes to the language to be used on the ballot, should county commissioners choose to place the local sales tax change before the public for a

vote. Section 3 also makes conforming changes to continue the local sales tax distribution on a quarterly basis until July 1, 2003. Sections 4 and 8, in combination, repeal the local government reimbursements and hold local governments "harmless" for at least a portion of the loss. This "hold harmless" payment is eliminated July 1, 2012. Section 5 modifies the distribution of the local portion of use taxes collected on the individual income tax form. Section 6 allows local governments to amend their budget ordinances to reduce the property tax levy if they receive additional and unanticipated revenues. Section 7 outlines the timeline that counties must follow when notifying the Department of Revenue of their intention to levy the additional ½ cent. Section 9 creates a special revenue distribution process for the additional ½ cent that applies only to September 2002 collections. Section 10 allows the Department of Revenue to use up to $275,000 of local sales tax revenue to fund implementation of the new tax. Section 11 exempts Department of Revenue from standard contract and bid requirements, but only as it relates to items needed to administer the additional local option sales tax. Sections 12 – 14 make conforming language changes in the existing local sales tax statutes. Section 15 waives the public notice and hearing requirements for the additional ½ cent tax, if the new tax would become effective before January 1, 2003.

BACKGROUND

In 2001 the General Assembly approved a sales tax "swap". Under this proposal the state levies an additional ½ cent sales tax, bringing the state rate to 4.5%, and the total rate to 6.5%. This additional ½ cent sunsets on June 30, 2003. Starting July 1, 2003, county commissioners are authorized to levy an additional ½ cent at the county level, moving the local rate to 2.5% but holding the combined rate at 6.5%. Also effective July 1, 2003, the state will stop paying local governments approximately $333.4 million in reimbursements for previous tax law changes in the areas of property taxes on inventory and intangibles, the homestead exemption, and sales taxes on food purchased with food stamps.

ASSUMPTIONS AND METHODOLOGY:

LOCAL OPTION SALES TAX

Sections 1-3, 7, and 9 – 15 collectively allow county governments to levy an additional ½ cent of local sales tax 10 months earlier than existing law. This means that in counties that choose to levy the tax, the combined state and local sales tax rate will be 7.0% (4.5% state, 2.5% local) until the state sunsets its recently enacted ½ cent in July 2003. The rate in Mecklenburg County will be 7.5% for the same time period, assuming Mecklenburg chooses to levy the tax.

Fiscal Research believes that in FY 2001-02, each penny of local sales tax generated $716.8 million in revenue. (This estimate does not include food). Using a growth rate of 1.2% suggests the following non-food, sales tax revenue stream for FY 2002-03:

Fiscal Year	Revenue from 1 Cent	Revenue from 1/2 Cent
2002-03	$725.40	$362.70

Once adjustments are made for the September effective date, the total estimated statewide potential revenue available to local governments from this additional ½ cent is approximately $278.8 million. However, since the language is permissive and counties can decide to enact the tax at any time, no exact fiscal estimate is possible on this portion of the bill.

The Department of Revenue has indicated that it will be unable to process the September taxes collected under this provision in the traditional manner due to computer programming limitations. As a result, the amount of revenue each county and associated municipality receives from this tax in those two months will be distributed on the basis of their proportion of the previous fiscal year's sales tax revenue (per capita and point of origin). In making this calculation, the Secretary of Revenue will only consider those communities that choose to levy the tax. Beginning October 1, 2002, distribution will be made as normal, with funds distributed ½ on a per capita basis and ½ on a point of origin basis.

Section 7 allows local governments to begin levying the tax on the first day of any calendar month on or after September 1, 2002, and limits the amount of notice local governments must give the Department of Revenue for local sales tax changes effective between September 1, 2002, and December 31, 2002. No revenue side impact is expected as a result of this expedited process.

Sections 12 - 14 re-title and re-codify the existing local sales tax statutes. No fiscal impact is expected from these sections of the bill.

Section 15 eliminated the public notice and hearing requirements for adopting the additional ½ cent tax when the tax is adopted without a vote of the people. No fiscal impact is expected as a result of this portion of the bill.

Repeal of Local Government Reimbursements and Modification of Hold Harmless Payments

Sections 4 and 8, in combination, repeal the local government reimbursements and hold local governments "harmless" for at least a portion of the loss.

Since 1979, the General Assembly has made several changes to tax law that impact local governments. The state's cities and counties have received reimbursements from the state for some of these losses, particularly as they relate to the sales and property tax bases. The state reimburses local governments for property tax losses related to the repeal of taxes on inventories and intangibles, as well as some of the losses associated with the homestead exemption. Locals also receive a reimbursement for sales taxes that are no longer paid on items purchased with food stamps.

According to the Department of Revenue's Tax Research Division, annual reimbursements are as follows:

Reimbursement	Amount (Millions)
Food Stamps	$6.4
Intangibles	$128.7
Homestead	$8.2
Retail & Wholesale Inventory	$82.0
Manufacturers Inventory	$108.1
TOTAL	$333.4

Section 8 of the bill repeals all of these reimbursements. Because all reimbursement amounts are either fixed or frozen, no growth is included in the estimate.

Section 4 of the bill instructs the Secretary of Revenue to make a hold harmless payment in FY 2002-03 to those local governments whose gain from the sales tax is less than 100% of their loss from the repealed reimbursements. (Current law continues a 100% hold harmless payment in perpetuity, starting in 2003-04). The legislation offers a hold harmless payment to all communities, regardless if they levy the new tax, but only makes a payment for the gap between the estimated sales tax revenue (as if they levied the tax) and the reimbursement. (This mirrors the existing law that does not come into effect until FY 2003-04).

Because there is no hold harmless payment in FY 2002-03 under existing law, all of the FY 2002-03 hold harmless payment is a loss to the state General Fund and a gain to local governments.

This section of the bill also eliminates all hold harmless payments effective July 1, 2012.

MODIFY USE TAX PAYMENTS

Section 5 modifies the distribution of the local portion of use taxes collected on the individual income tax form. North Carolina consumers have been liable for use tax payments on all purchases on which sales tax are not collected since 1939. The use tax is imposed at the same rate as the sales tax and is designed to capture the revenue lost through sales by retailers that do not collect North Carolina sales tax. Unlike the retail sales tax that is collected by the merchant, the consumer pays the use tax directly to the state. From a practical standpoint, the use tax generally applied to traditional out of state purchases for consumption in North Carolina, or those sales made through a catalog or mail order company. The 1999 General Assembly approved HB 1433 to simplify use tax collection by providing that the use tax will be paid on the taxpayer's income tax return. That legislation also indicated that the state should forward one-third of the proceeds collected on this line to the state's counties and cities in proportion to their total local sales tax payments. At that time, the combined state rate was 6%, with 2% or one-third of that amount being local sales taxes. Since that time, the combined state rate has increased to 6.5% and could go to 7.0% under the provisions of this bill. As a result, one-third is no longer the appropriate proportion to forward to local governments.

The Department of Revenue reports collecting approximately $4.5 million in use taxes off of the individual income tax returns for calendar year 2001. The distribution formula in existing law, the standard sales tax growth rates, and an adjustment factor for a higher sales tax rate, are used to compute the following revenue stream:

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,000,000	$3,187,800	$3,176,802	$3,510,684	$3,672,175	$3,841,096
Local	$1,500,000	$1,593,900	$1,588,401		$1,836,088	$1,920,548
TOTAL	**$4,500,000**	**$4,781,700**	**$4,765,203**	**$5,266,026**	**$5,508,263**	**$5,761,643**

The bill requires that the proportion of the tax paid to local units reflect what proportion of the general rate is actually local tax. Therefore, under the current rate structure, local units should receive 30.8% of the revenue (2.0% is 30.8% of a 6.5% tax). If the new rate in this bill is used, locals should receive 35.7% of the funds (2.5% is 35.7% of a 7.0% rate). When the state's extra ½ cent is repealed in July 2003 the locals should begin receiving 38.5% of the revenue (2.5% is 38.5% of a 6.5% rate). Using these ratios suggests the following new revenue streams:

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,000,000	$3,191,785	$2,997,313	$3,238,606	$3,387,582	$3,543,411
Local	$1,500,000	$1,589,915	$1,767,890	$2,027,420	$2,120,681	$2,218,233
TOTAL	$4,500,000	$4,781,700	$4,765,203	$5,266,026	$5,508,263	$5,761,643

Note: Because individual income tax returns reflect purchases made during a calendar year, and all sales tax rate changes become effective in July, the average of the two fiscal year's proportions are used to determine the division of state and local revenue.

The projected potential revenue changes as a result of this bill are as follows:

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,985	($179,489)	($272,078)	($284,594)	($297,685)
Local	($3,985)	$179,489	$272,078	$284,594	$297,685

However, because the provision that allows this item to remain on the individual income tax return expires with tax year 2002, the only impact seen as the result of this bill is the first fiscal year.

CHANGE LOCAL BUDGET ORDINANCES

Section 6 allows local governments to amend their budget ordinances to reduce their property tax levy to reflect any additional and unanticipated revenues. Because this only applies to local units, no state General Fund impact is expected. Further, since the language is permissive and only gives local governments a new method to respond to the unclear status of revenues from the state or a local sales tax increase, no local estimate is possible on this portion of the bill.

SOURCES OF DATA: NC Department of Revenue, Tax Research Division.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: July 15, 2002

Impact of Sales Tax Swap
September 1, 2002
Effective Date

Local Governments	Reimbursements	% of Total Sales Tax	Projected Sales Tax	Net Change from Swap
Alamance	**4,116,412**	1.003%	2,795,862	(1,320,550)
Alamance	3,445	0.002%	6,897	3,452
Burlington	1,383,263	0.351%	979,077	(404,186)
Elon College	107,922	0.052%	144,186	36,264
Gibsonville		0.017%	48,077	48,077
Graham	264,301	0.099%	276,922	12,622
Green Level	8,531	0.015%	41,653	33,122
Haw River	170,049	0.018%	50,850	(119,199)
Mebane	233,027	0.060%	166,185	(66,842)
Swepsonville	237	0.006%	17,626	17,388
Alexander	**879,473**	0.276%	770,202	(109,271)
Taylorsville	58,771	0.021%	57,653	(1,118)
Alleghany	**271,292**	0.090%	251,967	(19,325)
Sparta	18,976	0.018%	50,262	31,286
Anson	**870,049**	0.182%	506,060	(363,989)
Ansonville	4,030	0.005%	12,840	8,811
Lilesville	4,271	0.003%	9,105	4,834
McFarlan	598	0.001%	1,910	1,312
Morven	4,269	0.004%	11,652	7,383
Peachland	3,240	0.004%	11,121	7,881
Polkton	10,333	0.014%	37,693	27,360
Wadesboro	168,913	0.028%	77,255	(91,659)
Ashe	**538,628**	0.212%	589,915	51,287
Jefferson	26,280	0.013%	35,371	9,092
Lansing	1,738	0.002%	4,308	2,569
West Jefferson	67,461	0.010%	27,790	(39,671)
Avery	**311,593**	0.182%	508,578	196,985
Banner Elk	9,629	0.011%	31,093	21,464
Beech Mountain		0.000%	319	319
Crossnore	1,286	0.003%	8,538	7,252
Elk Park	2,967	0.006%	15,387	12,420
Grandfather Village	36	0.000%	1,179	1,143
Newland	14,121	0.008%	22,778	8,657
Seven Devils		0.000%	765	765
Sugar Mountain	19,802	0.002%	4,237	(15,565)
Beaufort	**1,407,581**	0.405%	1,129,542	(278,039)
Aurora	6,655	0.006%	17,317	10,662
Bath	2,711	0.002%	4,732	2,021
Belhaven	24,730	0.021%	58,552	33,821
Chocowinity	18,577	0.007%	20,413	1,836
Pantego	1,659	0.002%	4,425	2,766
Washington	235,971	0.093%	258,584	22,613
Washington Park	4,195	0.005%	12,585	8,390
Bertie	**475,321**	0.125%	349,281	(126,040)

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Askewville	1,188	0.001%	3,540	2,353
Aulander	20,800	0.007%	20,890	90
Colerain	3,630	0.001%	3,928	298
Kelford	1,827	0.001%	3,311	1,485
Lewiston Woodville	11,922	0.005%	14,373	2,450
Powellsville	2,075	0.002%	4,597	2,522
Roxobel	2,120	0.001%	4,122	2,002
Windsor	15,246	0.014%	40,054	24,808
Bladen	**835,674**	0.252%	703,240	(132,434)
Bladenboro	33,091	0.008%	21,103	(11,989)
Clarkton	16,759	0.004%	11,437	(5,323)
Dublin	7,090	0.001%	2,979	(4,112)
East Arcadia	1,841	0.001%	1,549	(292)
Elizabethtown	106,249	0.029%	79,833	(26,416)
Tar Heel	637	0.000%	584	(54)
White Lake	15,255	0.009%	25,054	9,799
Brunswick	**1,315,255**	0.738%	2,058,319	743,064
Bald Head Island	37,562	0.002%	4,289	(33,273)
Belville	823	0.001%	3,195	2,372
Boiling Spring Lakes	13,055	0.025%	69,432	56,377
Bolivia	1,802	0.003%	8,342	6,541
Calabash	4,920	0.011%	30,382	25,462
Carolina Shores	1,005	0.014%	37,719	36,714
Caswell Beach	4,811	0.003%	9,348	4,538
Holden Beach	14,204	0.010%	26,507	12,302
Leland	8,375	0.027%	75,171	66,797
Long Beach	4,473	0.000%	-	(4,473)
Navassa	2,787	0.006%	16,330	13,543
Northwest	59,571	0.009%	24,643	(34,928)
Oak Island	15,149	0.073%	204,805	189,656
Ocean Isle Beach	1,073	0.008%	22,690	21,618
Sandy Creek	29,476	0.003%	8,905	(20,571)
Shallotte	21,916	0.014%	39,405	17,489
Southport	487	0.028%	78,721	78,234
Saint James	15,808	0.007%	20,560	4,753
Sunset Beach	1,866	0.021%	58,072	56,206
Varnamtown		0.006%	15,383	15,383
Yaupon Beach		0.000%	-	-
Buncombe	**6,546,785**	2.267%	6,321,393	(225,392)
Asheville	2,318,205	0.638%	1,777,587	(540,617)
Biltmore Forest	53,143	0.025%	69,286	16,143
Black Mountain	102,411	0.039%	108,332	5,921
Montreat	22,141	0.010%	28,373	6,232
Weaverville	71,928	0.022%	60,287	(11,642)
Woodfin	49,608	0.010%	28,694	(20,914)

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Burke	**2,406,170**	0.662%	1,845,370	(560,800)
Connelly Springs	4,675	0.012%	34,210	29,535
Drexel	59,291	0.016%	45,249	(14,042)
Glen Alpine	10,192	0.008%	23,388	13,196
Hickory		0.001%	3,163	3,163
Hildebran	14,867	0.013%	36,697	21,830
Long View		0.007%	18,545	#VALUE!
Morganton	580,084	0.126%	351,891	(228,193)
Rhodhiss		0.003%	7,134	7,134
Rutherford College	6,400	0.010%	27,882	21,483
Valdese	253,300	0.034%	94,621	(158,679)
Cabarrus	**3,880,113**	1.204%	3,356,111	(524,002)
Concord	1,660,628	0.433%	1,208,095	(452,533)
Harrisburg	27,774	0.008%	23,544	(4,230)
Kannapolis	657,741	0.145%	403,011	(254,730)
Locust		0.000%	26	26
Midland		0.000%	863	863
Mount Pleasant	19,603	0.007%	20,044	440
Caldwell	**2,437,306**	0.544%	1,517,886	(919,420)
Blowing Rock		0.000%	860	860
Cajah Mountain	1,204	0.020%	57,029	55,826
Cedar Rock	2,715	0.002%	6,821	4,106
Gamewell	1,558	0.028%	77,132	75,575
Granite Falls	126,390	0.028%	77,513	(48,877)
Hickory		0.000%	-	-
Hudson	70,698	0.023%	64,530	(6,167)
Lenoir	1,063,457	0.114%	318,832	(744,626)
Rhodhiss	19,227	0.003%	8,761	(10,466)
Sawmills	24,163	0.036%	99,356	75,193
Camden	**118,760**	0.059%	165,427	46,667
Elizabeth City		0.000%	858	858
Carteret	**1,189,066**	0.665%	1,853,221	664,155
Atlantic Beach	74,779	0.038%	105,507	30,729
Beaufort	54,756	0.021%	57,423	2,667
Bogue	1,321	0.000%	796	(525)
Cape Carteret	14,872	0.007%	20,765	5,893
Cedar Point	3,039	0.001%	2,995	(45)
Emerald Isle	80,334	0.044%	122,779	42,445
Indian Beach	7,311	0.004%	10,922	3,611
Morehead City	176,297	0.057%	159,908	(16,389)
Newport	24,686	0.011%	31,057	6,370
Peletier	985	0.000%	696	(289)
Pine Knoll Shores	28,605	0.014%	40,360	11,755
Caswell	**432,325**	0.162%	450,486	18,161
Milton	1,326	0.000%	1,012	(314)

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Yanceyville	20,327	0.005%	13,868	(6,459)
Catawba	**4,211,477**	1.337%	3,728,325	(483,152)
Brookford	18,381	0.004%	12,425	(5,956)
Catawba	14,209	0.007%	19,263	5,054
Claremont	118,138	0.011%	29,826	(88,312)
Conover	478,595	0.073%	204,779	(273,816)
Hickory	1,798,446	0.358%	998,238	(800,208)
Long View	189,479	0.038%	106,490	(82,989)
Maiden	118,002	0.031%	87,310	(30,693)
Newton	510,763	0.123%	344,179	(166,583)
Chatham	**1,572,359**	0.428%	1,194,231	(378,128)
Cary		0.000%	76	76
Goldston	8,367	0.003%	9,677	1,311
Pittsboro	42,094	0.020%	56,750	14,657
Siler City	179,303	0.051%	142,457	(36,846)
Cherokee	**483,033**	0.250%	697,620	214,587
Andrews	30,939	0.022%	61,229	30,290
Murphy	46,039	0.018%	49,739	3,700
Chowan	**448,912**	0.135%	376,163	(72,749)
Edenton	127,132	0.023%	63,176	(63,956)
Clay	**166,722**	0.081%	226,090	59,368
Hayesville	4,710	0.002%	5,002	292
Cleveland	**2,680,820**	0.840%	2,342,748	(338,072)
Belwood		0.000%	-	-
Boiling Springs	24,582	0.009%	25,436	854
Casar	784	0.000%	272	(512)
Earl	693	0.000%	450	(243)
Fallston	1,399	0.000%	803	(597)
Grover	15,446	0.002%	6,849	(8,597)
Kings Mountain*	162,516	0.038%	104,849	(57,666)
Kingstown	4,791	0.002%	4,207	(584)
Lattimore	1,200	0.000%	1,313	114
Lawndale	19,743	0.002%	4,972	(14,771)
Mooresboro		0.000%	-	-
Patterson Springs		0.000%	-	-
Polkville	1,260	0.000%	550	(711)
Shelby	324,100	0.124%	346,854	22,754
Waco	786	0.000%	374	(412)
Columbus	**1,757,565**	0.382%	1,063,933	(693,632)
Boardman	747	0.002%	4,237	3,490
Bolton	4,530	0.004%	10,969	6,439
Brunswick	3,981	0.002%	6,204	2,223
Cerro Gordo	1,378	0.002%	4,460	3,082
Chadbourn	31,618	0.015%	42,516	10,898
Fair Bluff	11,963	0.008%	22,991	11,028

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Lake Waccamaw	18,048	0.011%	31,588	13,540
Sandyfield	1,791	0.002%	6,001	4,211
Tabor City	79,416	0.018%	49,511	(29,905)
Whiteville	226,990	0.041%	113,457	(113,533)
Craven	**1,961,091**	0.784%	2,185,579	224,488
Bridgeton	9,758	0.003%	8,062	(1,696)
Cove City	1,993	0.001%	1,407	(585)
Dover	2,888	0.001%	2,801	(87)
Havelock	150,533	0.051%	140,815	(9,719)
New Bern	474,536	0.189%	526,150	51,614
River Bend	21,365	0.010%	27,358	5,992
Trent Woods	22,367	0.009%	24,787	2,421
Vanceboro	9,535	0.004%	11,652	2,117
Cumberland	**5,231,949**	2.231%	6,219,844	987,895
Falcon	1,323	0.003%	8,182	6,859
Fayetteville	1,418,415	0.975%	2,718,988	1,300,573
Godwin	458	0.001%	1,555	1,097
Hope Mills	75,671	0.083%	232,261	156,591
Linden	846	0.001%	3,601	2,755
Spring Lake	62,262	0.065%	182,528	120,266
Stedman	5,061	0.005%	14,042	8,981
Wade	3,147	0.003%	9,738	6,592
Currituck	**267,405**	0.266%	741,406	474,001
Dare	**446,113**	0.655%	1,824,725	1,378,612
Kill Devil Hills	63,222	0.075%	210,277	147,055
Kitty Hawk	29,272	0.031%	85,209	55,936
Manteo	40,773	0.018%	49,419	8,646
Nags Head	52,495	0.070%	193,811	141,316
Southern Shores	20,079	0.024%	66,064	45,985
Davidson	**3,590,778**	1.158%	3,227,388	(363,390)
Denton	51,555	0.013%	35,548	(16,008)
High Point		0.006%	17,525	17,525
Lexington	416,839	0.157%	437,383	20,544
Thomasville	943,278	0.144%	400,614	(542,664)
Davie	**2,571,572**	0.265%	738,586	(1,832,986)
Bermuda Run	580	0.015%	41,423	40,844
Cooleemee	8,464	0.009%	24,016	15,552
Mocksville	326,134	0.036%	99,223	(226,910)
Duplin	**1,068,664**	0.350%	976,602	(92,062)
Beulaville	18,605	0.010%	27,234	8,629
Calypso	7,703	0.004%	11,433	3,730
Faison	43,898	0.006%	16,986	(26,913)
Greenevers	2,276	0.004%	12,267	9,991
Harrells		0.000%	44	44
Kenansville	9,881	0.007%	19,816	9,935

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Magnolia	5,647	0.007%	18,522	12,875
Mount Olive		0.000%	44	44
Rose Hill	32,768	0.011%	31,733	(1,035)
Teachey	1,769	0.002%	5,398	3,629
Wallace	53,616	0.027%	75,228	21,612
Warsaw	92,782	0.024%	66,604	(26,178)
Durham	**9,865,341**	1.863%	5,192,719	(4,672,622)
Chapel Hill		0.013%	36,464	36,464
Durham	3,680,605	1.550%	4,320,827	640,223
Morrisville		0.000%	-	-
Raleigh		0.000%	52	52
Edgecombe	**1,702,759**	0.353%	983,639	(719,120)
Conetoe	1,906	0.002%	5,043	3,136
Leggett	470	0.001%	1,948	1,478
Macclesfield	4,356	0.003%	8,993	4,637
Pinetops	13,241	0.010%	28,562	15,322
Princeville	19,963	0.014%	39,266	19,303
Rocky Mount		0.113%	314,567	314,567
Sharpsburg		0.001%	2,075	2,075
Speed	444	0.001%	1,584	1,139
Tarboro	436,539	0.069%	192,836	(243,703)
Whitakers		0.003%	7,955	7,955
Forsyth	**13,528,655**	2.723%	7,592,395	(5,936,260)
Bethania	2,130	0.001%	1,942	(189)
Clemmons	65,814	0.018%	49,899	(15,915)
High Point		0.000%	103	103
Kernersville	1,281,322	0.128%	356,659	(924,663)
King		0.005%	14,392	14,392
Lewisville	31,091	0.009%	24,327	(6,764)
Rural Hall	45,592	0.011%	31,209	(14,383)
Tobaccoville	5,954	0.001%	2,924	(3,030)
Walkertown	30,435	0.009%	24,671	(5,764)
Winston-Salem	7,919,187	1.237%	3,447,620	(4,471,567)
Franklin	**932,591**	0.381%	1,061,850	129,259
Bunn	4,685	0.002%	4,790	105
Centerville		0.000%	-	-
Franklinton	23,215	0.008%	21,047	(2,168)
Louisburg	42,859	0.016%	45,509	2,651
Youngsville	19,117	0.005%	13,194	(5,923)
Gaston	**6,143,884**	1.351%	3,766,481	(2,377,403)
Belmont	208,550	0.063%	176,609	(31,941)
Bessemer City	112,004	0.037%	104,067	(7,936)
Cherryville	101,719	0.041%	113,641	11,922
Cramerton	65,083	0.019%	53,435	(11,647)
Dallas	21,116	0.024%	67,661	46,545

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Dellview		0.000%	-	-
Gastonia	1,463,183	0.475%	1,322,906	(140,278)
High Shoals	18,215	0.005%	12,689	(5,526)
Kings Mountain		0.009%	26,417	26,417
Lowell	91,142	0.019%	53,871	(37,271)
McAdenville	353	0.006%	17,071	16,718
Mount Holly	409,604	0.062%	174,055	(235,549)
Ranlo	55,979	0.016%	45,751	(10,227)
Spencer Mountain	1,841	0.001%	2,700	859
Stanley	66,340	0.024%	67,371	1,031
Gates	**233,369**	0.073%	202,809	(30,560)
Gatesville	2,528	0.002%	6,296	3,769
Graham	**159,541**	0.064%	178,396	18,855
Robbinsville	54,620	0.007%	18,665	(35,955)
Lake Santeetlah	2,728	0.000%	1,044	(1,685)
Granville	**1,842,358**	0.364%	1,013,396	(828,962)
Creedmoor	33,441	0.018%	48,853	15,412
Oxford	208,066	0.073%	204,597	(3,470)
Stem	2,626	0.002%	6,466	3,840
Stovall	3,249	0.004%	10,413	7,163
Greene	**445,629**	0.134%	373,343	(72,286)
Hookerton	5,021	0.001%	3,578	(1,443)
Snow Hill	18,002	0.006%	16,116	(1,886)
Walstonburg	2,591	0.001%	2,247	(344)
Guilford	**15,813,790**	3.390%	9,450,122	(6,363,668)
Archdale		0.003%	9,080	9,080
Burlington		0.000%	457	457
Gibsonville	141,786	0.019%	52,964	(88,823)
Greensboro	8,041,222	1.796%	5,007,887	(3,033,335)
High Point	3,270,455	0.662%	1,844,371	(1,426,084)
Jamestown	47,096	0.031%	85,127	38,031
Kernersville		0.000%	-	-
Oak Ridge	847	0.022%	61,997	61,150
Pleasant Garden	1,455	0.038%	106,555	105,099
Sedalia	201	0.005%	14,701	14,500
Stokesdale	813	0.021%	59,163	58,349
Summerfield	2,026	0.053%	148,397	146,371
Whitsett	247	0.006%	18,039	17,792
Halifax	**1,551,036**	0.418%	1,165,398	(385,638)
Enfield	31,205	0.008%	23,567	(7,638)
Halifax	3,198	0.001%	2,912	(286)
Hobgood	3,274	0.001%	2,797	(477)
Littleton	19,820	0.004%	12,130	(7,690)
Roanoke Rapids	554,377	0.130%	363,180	(191,197)
Scotland Neck	37,104	0.008%	22,671	(14,432)

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Weldon	34,004	0.010%	29,003	(5,001)
Harnett	**1,273,246**	0.679%	1,892,583	619,337
Angier	35,064	0.016%	45,234	10,171
Broadway		0.000%	70	70
Coats	22,303	0.010%	27,654	5,351
Dunn	257,080	0.056%	155,848	(101,231)
Erwin	117,179	0.028%	78,161	(39,018)
Lillington	80,512	0.021%	57,273	(23,239)
Haywood	**1,262,259**	0.506%	1,411,725	149,466
Canton	298,907	0.035%	98,828	(200,079)
Clyde	11,393	0.011%	30,947	19,554
Maggie Valley	17,699	0.006%	17,533	(166)
Waynesville	185,212	0.096%	267,273	82,061
Henderson	**3,327,296**	0.850%	2,370,751	(956,545)
Flat Rock	829	0.020%	55,063	54,234
Fletcher	70,551	0.035%	96,597	26,046
Hendersonville	458,725	0.102%	285,532	(173,193)
Laurel Park	52,667	0.022%	61,913	9,246
Saluda		0.000%	115	115
Hertford	**587,675**	0.190%	529,938	(57,737)
Ahoskie	96,877	0.029%	81,124	(15,753)
Cofield	34,962	0.002%	4,573	(30,389)
Como	927	0.000%	620	(308)
Harrellsville	782	0.000%	749	(33)
Murfreesboro	53,138	0.014%	38,690	(14,448)
Winton	27,465	0.004%	12,368	(15,097)
Hoke	**690,891**	0.202%	562,341	(128,550)
Raeford	244,943	0.030%	82,400	(162,543)
Hyde	**137,755**	0.065%	180,296	42,541
Iredell	**2,939,504**	1.154%	3,217,069	277,565
Davidson		0.000%	28	28
Harmony	2,255	0.006%	16,495	14,239
Love Valley	501	0.001%	2,267	1,766
Mooresville	520,232	0.162%	451,904	(68,328)
Statesville	1,229,773	0.224%	623,811	(605,961)
Troutman	66,438	0.021%	57,403	(9,035)
Jackson	**622,160**	0.359%	999,684	377,524
Dillsboro	2,944	0.002%	4,284	1,340
Forest Hills	1,400	0.000%	1,290	(110)
Highlands		0.001%	2,088	2,088
Sylva	62,246	0.022%	61,828	(418)
Webster	1,246	0.000%	405	(841)
Johnston	**2,409,952**	1.132%	3,156,164	746,212
Benson	38,930	0.018%	49,404	10,475
Clayton	142,326	0.054%	151,220	8,894

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Four Oaks	10,538	0.005%	13,185	2,647
Kenly	26,198	0.009%	25,048	(1,151)
Micro	3,124	0.001%	3,603	480
Pine Level	9,268	0.004%	11,386	2,118
Princeton	9,536	0.004%	11,410	1,874
Selma	153,158	0.028%	77,559	(75,598)
Smithfield	169,896	0.081%	224,930	55,034
Wilson's Mills	1,989	0.001%	1,774	(215)
Jones	**161,772**	0.059%	164,614	2,842
Maysville	7,804	0.002%	5,929	(1,876)
Pollocksville	2,868	0.001%	1,974	(894)
Trenton	2,791	0.001%	1,869	(922)
Lee	**1,656,688**	0.407%	1,135,480	(521,208)
Broadway	15,168	0.009%	25,962	10,794
Sanford	776,325	0.185%	514,398	(261,927)
Lenoir	**1,794,441**	0.489%	1,362,254	(432,187)
Grifton		0.000%	1,112	1,112
Kinston	630,182	0.143%	399,713	(230,470)
La Grange	29,095	0.009%	24,605	(4,491)
Pink Hill	17,157	0.003%	8,035	(9,122)
Lincoln	**1,698,424**	0.549%	1,530,805	(167,619)
High Shoals	518,557	0.000%	-	(518,557)
Lincolnton		0.095%	264,655	264,655
Maiden		0.000%	25	25
Macon	**567,223**	0.359%	1,000,340	433,117
Franklin	68,958	0.029%	80,948	11,991
Highlands	44,962	0.028%	79,326	34,364
Madison	**326,526**	0.139%	387,319	60,793
Hot Springs	8,352	0.004%	11,449	3,097
Mars Hill	27,320	0.012%	33,960	6,640
Marshall	24,892	0.006%	17,899	(6,993)
Martin	**939,860**	0.229%	638,971	(300,889)
Bear Grass	531	0.000%	450	(81)
Everetts	1,552	0.000%	1,194	(357)
Hamilton	3,853	0.001%	3,323	(531)
Hassell	411	0.000%	231	(180)
Jamesville	5,725	0.002%	4,973	(752)
Oak City	3,367	0.001%	2,949	(418)
Parmele	2,207	0.001%	1,483	(725)
Robersonville	39,457	0.007%	19,278	(20,179)
Williamston	171,449	0.035%	97,679	(73,770)
McDowell	**1,214,640**	0.381%	1,061,451	(153,189)
Marion	233,569	0.049%	135,985	(97,584)
Old Fort	147,295	0.010%	26,508	(120,787)
Mecklenburg	**24,379,846**	7.200%	20,072,234	(4,307,612)

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Charlotte	13,815,551	3.391%	9,452,975	(4,362,576)
Cornelius	127,918	0.075%	207,991	80,073
Davidson	146,785	0.030%	84,005	(62,780)
Huntersville	173,689	0.080%	223,525	49,836
Matthews	267,855	0.077%	214,840	(53,016)
Mint Hill	102,736	0.040%	112,754	10,018
Pineville	121,657	0.026%	71,392	(50,265)
Mitchell	**431,788**	0.145%	405,192	(26,596)
Bakersville	5,249	0.002%	6,341	1,092
Spruce Pine	84,426	0.023%	64,248	(20,178)
Montgomery	**664,726**	0.182%	507,728	(156,998)
Biscoe	44,837	0.012%	33,973	(10,864)
Candor	19,102	0.006%	15,361	(3,741)
Mount Gilead	51,417	0.010%	28,264	(23,153)
Star	106,337	0.006%	18,084	(88,253)
Troy	94,699	0.028%	77,273	(17,426)
Moore	**2,771,784**	0.696%	1,941,137	(830,647)
Aberdeen	185,496	0.036%	100,616	(84,879)
Cameron	3,845	0.004%	10,604	6,759
Carthage	44,523	0.019%	53,396	8,872
Foxfire Village	13,004	0.004%	11,839	(1,165)
Pinebluff	29,237	0.010%	27,436	(1,801)
Pinehurst	392,276	0.085%	236,642	(155,634)
Robbins	61,136	0.011%	30,631	(30,505)
Southern Pines	536,906	0.098%	273,769	(263,137)
Taylortown	13,525	0.007%	20,644	7,119
Vass	24,415	0.007%	20,000	(4,416)
Whispering Pines	65,240	0.018%	48,912	(16,327)
Nash	**2,587,253**	0.696%	1,939,818	(647,435)
Bailey	11,158	0.005%	12,676	1,518
Castalia	1,545	0.002%	5,793	4,249
Dortches	742	0.007%	19,885	19,143
Middlesex	15,086	0.008%	21,127	6,041
Momeyer	853	0.002%	6,055	5,202
Nashville	75,939	0.032%	89,625	13,686
Red Oak	2,131	0.021%	57,478	55,347
Rocky Mount	1,320,225	0.318%	887,014	(433,211)
Sharpsburg	15,529	0.010%	28,989	13,461
Spring Hope	23,434	0.010%	28,663	5,228
Whitakers	10,888	0.003%	8,952	(1,936)
New Hanover	**4,733,498**	1.799%	5,014,963	281,465
Carolina Beach	83,467	0.044%	124,016	40,548
Kure Beach	30,278	0.015%	40,810	10,532
Wilmington	1,868,621	0.646%	1,801,763	(66,858)
Wrightsville Beach	76,873	0.035%	96,891	20,018

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Northampton	**466,764**	0.127%	352,743	(114,021)
Conway	17,048	0.005%	13,134	(3,914)
Garysburg	9,452	0.007%	18,202	8,750
Gaston	10,666	0.007%	18,337	7,671
Jackson	6,158	0.003%	9,480	3,322
Lasker	892	0.001%	2,559	1,668
Rich Square	11,316	0.007%	18,185	6,869
Seaboard	12,676	0.005%	13,605	930
Severn	21,293	0.002%	4,277	(17,016)
Woodland	8,134	0.004%	12,511	4,376
Onslow	**1,650,487**	1.057%	2,947,680	1,297,193
Holly Ridge	21,215	0.006%	15,943	(5,273)
Jacksonville	514,329	0.528%	1,470,759	956,430
North Topsail Beach	42,466	0.008%	22,642	(19,825)
Richlands	13,412	0.009%	25,245	11,833
Surf City		0.002%	6,739	6,739
Swansboro	20,921	0.011%	29,996	9,076
Orange	**3,183,344**	0.872%	2,431,702	(751,642)
Carrboro	246,322	0.127%	354,786	108,464
Chapel Hill	729,467	0.342%	952,797	223,329
Durham		0.000%	509	509
Hillsborough	103,392	0.043%	119,230	15,838
Mebane		0.004%	12,386	12,386
Pamlico	**249,962**	0.107%	299,543	49,581
Alliance		0.000%	-	-
Arapahoe	1,044	0.000%	219	(825)
Bayboro	4,727	0.001%	3,208	(1,519)
Grantsboro	1,319	0.000%	591	(728)
Mesic	1,424	0.000%	807	(618)
Minnesott Beach	2,503	0.001%	2,516	13
Oriental	12,538	0.004%	11,495	(1,043)
Stonewall	1,170	0.000%	702	(468)
Vandemere	1,766	0.000%	1,209	(557)
Pasquotank	**800,342**	0.328%	915,721	115,379
Elizabeth City	294,253	0.118%	328,015	33,762
Pender	**608,771**	0.314%	874,986	266,215
Atkinson	2,456	0.003%	7,477	5,021
Burgaw	36,821	0.030%	83,792	46,971
Saint Helena	1,855	0.003%	8,285	6,430
Surf City	36,737	0.007%	19,601	(17,136)
Topsail Beach	17,994	0.004%	10,283	(7,711)
Wallace		0.000%	808	808
Watha	531	0.001%	3,929	3,398
Perquimans	**187,613**	0.078%	216,216	28,603
Hertford	18,578	0.017%	46,159	27,581

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Winfall	3,991	0.003%	9,327	5,336
Person	**764,084**	0.305%	851,494	87,410
Roxboro	212,482	0.057%	157,614	(54,867)
Pitt	**2,968,158**	1.054%	2,938,406	(29,752)
Ayden	37,102	0.036%	100,368	63,265
Bethel	16,991	0.014%	39,155	22,163
Falkland	688	0.001%	2,711	2,024
Farmville	149,829	0.037%	104,090	(45,738)
Fountain	5,910	0.003%	8,433	2,523
Greenville	931,830	0.481%	1,340,928	409,098
Grifton	21,312	0.020%	55,285	33,973
Grimesland	3,309	0.004%	10,869	7,560
Simpson	3,519	0.004%	9,766	6,247
Winterville	58,482	0.033%	91,429	32,947
Polk	**976,829**	0.134%	372,286	(604,543)
Columbus	37,343	0.007%	19,643	(17,701)
Saluda	31,349	0.005%	14,364	(16,986)
Tryon	101,603	0.015%	40,737	(60,866)
Randolph	**3,058,549**	0.962%	2,681,572	(376,977)
Archdale	124,894	0.066%	182,995	58,100
Asheboro	950,335	0.149%	415,113	(535,222)
Franklinville	5,221	0.007%	19,722	14,501
High Point		0.000%	1,337	1,337
Liberty	80,593	0.018%	49,973	(30,619)
Ramseur	78,284	0.012%	34,391	(43,892)
Randleman	123,508	0.025%	70,226	(53,282)
Seagrove	12,520	0.002%	5,668	(6,852)
Staley	2,310	0.003%	7,218	4,908
Thomasville		0.000%	-	-
Trinity	22,452	0.058%	162,275	139,823
Richmond	**1,080,155**	0.365%	1,017,429	(62,726)
Dobbins Heights	7,701	0.009%	24,896	17,195
Ellerbee	19,819	0.009%	26,158	6,339
Hamlet	78,395	0.054%	151,067	72,672
Hoffman	2,336	0.004%	10,634	8,298
Norman	84	0.001%	2,118	2,034
Rockingham	190,466	0.079%	220,055	29,588
Robeson	**2,862,190**	0.924%	2,575,362	(286,828)
Fairmont	71,173	0.024%	66,610	(4,563)
Lumber Bridge	646	0.001%	2,389	1,743
Lumberton	516,596	0.165%	460,865	(55,731)
Marietta	326	0.002%	5,024	4,698
Maxton	49,426	0.022%	61,675	12,249
McDonald	314	0.001%	1,987	1,673
Orrum	148	0.001%	2,255	2,108

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Parkton	3,851	0.003%	8,061	4,210
Pembroke	32,162	0.022%	60,692	28,530
Proctorville	831	0.001%	3,908	3,077
Raynham	534	0.001%	2,702	2,168
Red Springs	46,480	0.031%	87,019	40,539
Rennert	909	0.002%	5,382	4,473
Rowland	21,333	0.009%	25,054	3,721
Saint Pauls	55,838	0.018%	50,488	(5,350)
Rockingham	**3,163,677**	0.642%	1,789,898	(1,373,779)
Eden	476,774	0.110%	306,284	(170,490)
Madison	153,544	0.017%	48,225	(105,319)
Mayodan	97,816	0.018%	49,701	(48,115)
Reidsville	634,679	0.103%	286,120	(348,558)
Stoneville	58,538	0.008%	23,095	(35,442)
Wentworth	1,050	0.014%	39,071	38,021
Rowan	**3,948,513**	0.943%	2,627,890	(1,320,623)
China Grove	49,482	0.029%	81,030	31,548
Cleveland	120,524	0.007%	19,030	(101,494)
East Spencer	36,048	0.018%	49,696	13,648
Faith	9,729	0.005%	15,312	5,583
Granite Quarry	48,118	0.016%	44,724	(3,394)
Kannapolis		0.068%	190,637	190,637
Landis	48,613	0.024%	67,974	19,361
Rockwell	40,288	0.014%	37,789	(2,499)
Salisbury	1,578,721	0.202%	563,116	(1,015,605)
Spencer	69,149	0.025%	69,645	496
Rutherford	**1,866,972**	0.531%	1,480,578	(386,394)
Alexander Mills	1,964	0.000%	-	(1,964)
Bostic	1,713	0.001%	1,908	195
Chimney Rock Villag	2,935	0.001%	2,507	(428)
Ellenboro	164,461	0.001%	3,083	(161,378)
Forest City	45,447	0.028%	79,009	33,562
Lake Lure	14,856	0.025%	69,633	54,777
Ruth	109,585	0.002%	4,362	(105,223)
Rutherfordton	187,004	0.029%	81,263	(105,742)
Spindale		0.030%	83,529	83,529
Sampson	**1,260,784**	0.430%	1,198,348	(62,436)
Autryville	1,841	0.002%	4,691	2,851
Clinton	333,996	0.077%	213,957	(120,039)
Falcon		0.000%	-	-
Faison		0.000%	-	-
Garland	19,779	0.006%	17,902	(1,877)
Harrells	2,222	0.002%	4,470	2,248
Newton Grove	9,300	0.005%	13,122	3,822
Roseboro	19,768	0.012%	34,807	15,040

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Salemburg	7,026	0.003%	9,427	2,400
Turkey	2,155	0.002%	6,528	4,373
Scotland	**1,551,985**	0.325%	907,066	(644,919)
East Laurinburg		0.000%	-	-
Gibson	5,791	0.002%	6,171	380
Laurinburg	169,418	0.063%	176,692	7,274
Maxton		0.002%	5,061	5,061
Wagram	6,176	0.003%	7,085	909
Stanly	**1,489,307**	0.436%	1,216,092	(273,215)
Albemarle	362,952	0.123%	342,198	(20,754)
Badin	30,232	0.011%	31,420	1,189
Locust	18,593	0.019%	53,473	34,880
New London	2,153	0.004%	10,192	8,039
Norwood	56,523	0.020%	54,536	(1,987)
Oakboro	31,627	0.011%	30,054	(1,573)
Richfield	4,397	0.004%	12,295	7,898
Stanfield	11,994	0.008%	21,164	9,169
Stokes	**3,483,045**	0.346%	965,798	(2,517,247)
Danbury	842	0.000%	1,058	216
King	68,237	0.023%	65,092	(3,145)
Walnut Cove	17,792	0.007%	19,358	1,566
Surry	**2,425,076**	0.724%	2,018,578	(406,498)
Dobson	31,111	0.014%	38,675	7,564
Elkin	311,342	0.041%	114,031	(197,311)
Mount Airy	784,521	0.091%	252,370	(532,151)
Pilot Mountain	91,657	0.014%	37,825	(53,833)
Swain	**210,486**	0.113%	315,174	104,688
Bryson City	23,001	0.010%	28,366	5,365
Transylvania	**1,221,869**	0.313%	873,756	(348,113)
Brevard	185,434	0.036%	101,143	(84,291)
Rosman	8,049	0.001%	2,356	(5,693)
Tyrrell	**103,133**	0.033%	90,962	(12,171)
Columbia	7,627	0.002%	4,346	(3,280)
Union	**2,684,821**	1.125%	3,135,225	450,404
Hemby Bridge	6	0.000%	486	481
Indian Trail	33,636	0.014%	38,314	4,678
Lake Park	4,523	0.003%	8,206	3,683
Marshville	33,461	0.012%	33,176	(285)
Marvin	3,545	0.000%	1,378	(2,167)
Mineral Springs	33	0.001%	2,340	2,308
Monroe	735,910	0.200%	557,107	(178,803)
Stallings	24,739	0.006%	18,002	(6,737)
Unionville	28	0.001%	2,233	2,205
Waxhaw	19,897	0.012%	33,767	13,870
Weddington	13,260	0.002%	6,501	(6,759)

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Wesley Chapel	3,905	0.001%	1,503	(2,402)
Wingate	12,216	0.006%	17,084	4,869
Vance	**1,418,579**	0.419%	1,168,945	(249,634)
Henderson	433,425	0.107%	298,712	(134,713)
Kittrell	19,805	0.000%	206	(19,599)
Middleburg	673	0.000%	742	69
Wake	**13,661,672**	5.552%	15,478,824	1,817,152
Apex	427,022	0.166%	463,619	36,597
Cary	1,395,168	0.872%	2,430,508	1,035,341
Fuquay-Varina	247,544	0.065%	182,019	(65,525)
Garner	270,693	0.173%	483,275	212,581
Holly Springs	95,733	0.072%	200,888	105,155
Knightdale	59,457	0.049%	137,011	77,554
Morrisville	245,197	0.038%	106,771	(138,426)
Raleigh	5,740,189	2.566%	7,154,255	1,414,066
Rolesville	73,040	0.008%	22,974	(50,066)
Wake Forest	248,601	0.113%	314,925	66,324
Wendell	57,801	0.038%	105,384	47,583
Zebulon	606,626	0.043%	121,014	(485,612)
Warren	**425,618**	0.145%	403,238	(22,380)
Macon	795	0.001%	3,421	2,626
Norlina	7,046	0.008%	22,777	15,732
Warrenton	24,554	0.007%	20,801	(3,753)
Washington	**312,826**	0.097%	269,850	(42,976)
Creswell	2,819	0.002%	6,867	4,048
Plymouth	55,246	0.029%	80,703	25,457
Roper	10,044	0.005%	12,873	2,829
Watauga	**715,559**	0.469%	1,306,932	591,373
Beech Mountain	59,607	0.003%	8,394	(51,212)
Blowing Rock	72,734	0.015%	40,979	(31,756)
Boone	250,137	0.162%	452,657	202,520
Seven Devils	18,405	0.001%	3,620	(14,785)
Wayne	**2,187,578**	0.944%	2,632,973	445,395
Eureka	2,697	0.001%	3,648	951
Fremont	40,584	0.007%	19,226	(21,359)
Goldsboro	1,030,485	0.277%	773,187	(257,298)
Mount Olive	142,207	0.033%	93,057	(49,150)
Pikeville	17,665	0.005%	12,935	(4,730)
Seven Springs	1,686	0.000%	1,311	(375)
Walnut Creek	12,176	0.008%	22,436	10,259
Wilkes	**1,791,831**	0.655%	1,824,689	32,858
Elkin		0.001%	2,118	2,118
North Wilkesboro	278,542	0.040%	110,609	(167,933)
Ronda	6,558	0.004%	10,446	3,888
Wilkesboro	179,271	0.033%	91,692	(87,579)

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Wilson	**2,189,105**	0.606%	1,690,227	(498,878)
Black Creek	4,594	0.002%	5,887	1,293
Elm City	46,764	0.006%	16,679	(30,085)
Kenly		0.000%	1,089	1,089
Lucama	5,436	0.002%	6,628	1,192
Saratoga	3,466	0.001%	3,888	422
Sharpsburg		0.001%	2,224	2,224
Sims	1,492	0.000%	1,110	(381)
Statonsburg	4,699	0.002%	5,382	683
Wilson	801,123	0.255%	709,786	(91,337)
Yadkin	**806,898**	0.310%	865,387	58,489
Arlington	5,248	0.002%	4,999	(249)
Boonville	26,335	0.004%	11,505	(14,830)
East Bend	7,810	0.004%	10,652	2,842
Jonesville	30,081	0.012%	32,794	2,712
Yadkinville	97,251	0.017%	48,782	(48,469)
Yancey	**384,636**	0.161%	449,048	64,412
Burnsville	48,621	0.015%	42,662	(5,959)
GRAND TOTAL	333,381,470	100.000%	278,785,600	
Assumptions:				
2001-02 Base for 1/2 Cent:		358,400,000		
Projections (accural)				
2002-03				
12 Month @ 0.0%	358,400,000			
12 Month @ 1.2%	**362,700,800**			
12 Month @ 1.8%	364,851,200			
September 1 effective	278,785,600			
October 1 effective	**248,560,533**			
Hold Harmless 2002-03				
September 1 effective	(81,167,306)			

NOTE: A negative number in the "net change from swap" column indicates the estimated hold harmless payment that will be made to that local government. No state payment would be made to localities showing a positive number in this column.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ALC-158 [v.1]

Date July 16 ,2002

Comm. Sub. [YES]
Amends Title [YES]
PCS

Representative Baddour

moves to amend the bill on page 1, line 3, by deleting the word "TAX" and substituting the phrase "TAX, TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR,";

and on page 5, lines 37-38, by adding the following between the lines:

"**SECTION 15.1.** G.S. 105-113.82(d) reads as rewritten:

`(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.2. G.S. 105-116.1(b) reads as rewritten:

`(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of

the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.3. G.S. 105-187.44(b) reads as rewritten:

`(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.4. G.S. 105-164.44F is amended by adding a new subsection to read:

`(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.5. G.S. 136-41.1 is amended by adding a new subsection to read:

`(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.6. G.S. 159B-27(d) reads as rewritten:

`(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the

revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution.'

SECTION 15.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under

this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ALC-158 [v.1]

from taking local tax revenue.' "

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Attachment 13

EDITION No. PCS

H. B. No. 1633

DATE July 16, 2002

S. B. No. _____

Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) C. Wilson
(Sen.)

1 moves to amend the bill on page 5, lines 33-37

2 ( ) WHICH CHANGES THE TITLE

3 by removing those lines

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SIGNED Connie Wilson

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

7/16/02

ROLL CALL VOTE

16 YES 17 NO = 33 (TOTAL)

HB# 1633
SB# ____

HOUSE STANDING COMMITTEE ON FINANCE

Amendment #2
Rep. Wilson

House Subcommittee on _____

YES	NO	MEMBER (last name)
	✓	Alexander
	✓	Allen
✓		Blust
✓		Buchanan
✓		Capps
	✓	Cox
✓		Decker
✓		Dedmon
✓		Eddins
✓		Edwards
	✓	Gibson
		Gray
	✓	Hackney (Speaker Pro Tem)
	✓	Hill
	✓	Holliman
	✓	Hurley
	✓	Jarrell
✓		Johnson
	✓	Luebke
✓		McComas
✓		McCombs
✓		McMahan
✓		Morris
✓		Pope
✓		Rayfield
✓		Starnes
	✓	Wainwright
	✓	Weiss
	✓	Willingham
✓		Wilson
✓		Womble

Ex officio Members

	✓	Majority Leader Baddour
✓		Majority Whip Earle
	✓	Majority Whip Cunningham

(16)
16 16 17

7/16/02

Attachment 14

ROLL CALL VOTE

20 YES 13 NO = 33 (TOTAL)

HB# 1633
SB# ____

HOUSE STANDING COMMITTEE ON FINANCE Proposed Committee Substitute

House Subcommittee on _____

YES	NO	MEMBER (last name)
✓		Alexander
✓		Allen
	✓	Blust
	✓	Buchanan
✓	✓	Capps
✓		Cox
	✓	Decker
✓		Dedmon
	✓	Eddins
✓		Edwards
✓		Gibson
		Gray
✓		Hackney (Speaker Pro Tem)
✓		Hill
✓		Holliman
✓		Hurley
✓		Jarrell
	✓	Johnson
✓		Luebke
	✓	McComas
✓		McCombs
	✓	McMahan
	✓	Morris
	✓	Pope
	✓	Rayfield
	✓	Starnes

YES	NO	MEMBER (last name)
✓		Wainwright
✓		Weiss
	✓	Willingham
	✓	Wilson
✓		Womble

Ex officio Members

✓		Majority Leader Baddour
✓		Majority Whip Earle
✓		Majority Whip Cunningham

20 13

Minutes
House Committee on Finance

July 17, 2002

The House Committee on Finance met on Wednesday, July 17, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building.

Rep. Gordon Allen, presiding Chair, called the meeting to order. The following members were present: Chairmen Buchanan, Luebke, and Wainwright; Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Cunningham, and Earle. Staff in attendance included Cindy Avrette, Trina Griffin, Mary Shuping, Martha Walston, Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, and Martha Harris.

Chairman Allen recognized and thanked pages Raymond Chin from Orange County, Matt Goodwin from Gaston County, Daniel Hurley (grandson of Representative Hurley from Fayetteville), and Kevin Kelly from Wake County.

Chairman Allen announced that the following bills were being referred to the Finance Subcommittee on Occupancy, chaired by Representative Jarrell:

HB 1620 Yadkin/Jonesville Occupancy Taxes
HB 1687 Archdale Occupancy Tax

A Proposed House Committee Substitute (PCS) for the following bill was placed before the committee for consideration:

SB 1292, AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 14001 OF THE CODE; TO DISREGARD THE PHAST-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN

APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

Chairman Allen recognized Representatives Luebke and Baddour, who went over each of the PCS's ten parts, pointing out the differences between that document and the Senate bill. They then called on staff to offer a more detailed, technical explanation of the bill and to answer questions of Committee members during discussion of the PCS.

Mr. Andrew L. Romanet, Jr., representing the N.C. League of Municipalities, spoke briefly about the League's position on a section of the PCS.

Chairman Allen adjourned the meeting at 9:50 A.M. and announced that the Committee would meet at 12:00 Noon in Room 643 of the Legislative Office Building to continue discussion of the PCS on SB 1292.

Respectfully submitted,

Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

House Committee PCS on SB 1292
Summary of PCS
Fiscal Note
Visitor Registration Sheet

AGENDA

House Finance Committee

July 17, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1292 BUDGET REVENUE ACT OF 2002

ADJOURNMENT

12 noon

VISITOR REGISTRATION SHEET

House Finance Committee — July 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ashley Shaffstall	The Capitol Group
Mark Benson	Capitol Group
Sharon Matthews	DOT
Omid Nasab	Hunton & Williams
Lennie Collins	NC DOR
Guy Radford	NC DOR
Eddie Finch	NC DOR
Ruth Sappie	NCDOT Fiscal
Bill Spencer	NCDOR
Deborah Ramey	NCPNA / NCALHD
Carl Closs	John Locke Foundation

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

July 17, 2002
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bart Capehill	DENR
Tom Gwyn	NCLM - Mayor - Elkin N.C
Pam Wescott	Sprint
Ron Ottavio	Wachovia
Bill Rustin	Assn of Comm Pharmacists
Alice Garland	EC
Katherine Davis	EC
Gene Ainsworth	RJ Reynolds
Sam Johnson	AT&T
Larry Bewley	LBA
Stacy Flannery	NCHCFA

VISITOR REGISTRATION SHEET

House Finance Committee — July 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	KCLH
Shayna Waites	INTERN
Cam Cover	BPMHC
Keri Carter	BTC
Elaine Mejia	BTC
Mary Carmilia	NCBIC
Brian Francis	Meck Cnty
Natalie English	Charlotte Chamber
Jan Pratt	NCASA
John Rustin	NCFPC
Holly Freeman	NCAE

VISITOR REGISTRATION SHEET

House Finance Committee — July 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anne Winner	MANC
Beth Anne Mumford	NCPC
Joanne Schoen Stevens	nursing
Roz Savell	NC CCA
Linda Pugh	SBE
ANN LORE	DUNS
Ardis Watkins	SEANC
Laura Harper	SEANC
Meg Ingwerd	Covenant w/ NC's Children
Paula Wolf	Covenant w/ NC's Children
Chris Fitzsimon	Common Sense Foundation
PRESTON HOWARD	NCIC
GEORGE SUDDATH	NCSOA

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 3

SENATE BILL 1292
Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO RAISE REVENUES TO SUPPORT THE CURRENT OPERATIONS OF STATE AND LOCAL GOVERNMENT, TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS, AND TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE LOCAL OPTION SALES TAX

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~August 1, 2002."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~'in addition to all current State and local sales and use taxes.' "

SECTION 1.3.(a) Effective July 1, 2002, G.S. 105-520 reads as rewritten:

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the

Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month.~~quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each ~~month~~ quarter between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a ~~month~~ quarter if it is not entitled to a distribution under G.S. 105-501 for the same ~~month.~~quarter."

SECTION 1.3.(b) This section is repealed effective July 1, 2003.

SECTION 1.4.(a) G.S. 105-521 reads as rewritten:

"**§ 105-521. Transitional local government hold harmless.**

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

(1) Local government. – A county or municipality that received a distribution of local sales taxes in the most recent fiscal year for which a local sales tax share has been calculated.

(2) Local sales tax share. – A local government's percentage share of the two-cent (2¢) sales taxes distributed during the most recent fiscal year for which data are available.

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections.

(4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax authorized in Article 39 of this Chapter and in Chapter 1096 of the 1967 Session Laws, the first one-half cent (½¢) local sales and use tax authorized in Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax authorized in Article 42 of this Chapter.

(b) ~~Distributions.~~ 2002-2003 Distribution. – On or before September 15, 2002, the Secretary must multiply each local government's local sales tax share by the sum of three hundred nine million ten thousand six hundred sixty-seven dollars ($309,010,667). If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(c) Subsequent Distributions. – On or before September 15, 2003, and each September 15 thereafter, the Secretary must multiply each local government's local sales tax share by the estimated amount that all local governments would be expected to

receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter, the Office of State Budget and Management and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections.

~~(c)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this section from sales and use tax collections under Article 5 of this Chapter.

~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee by January 31, ~~2004,~~2003, and each January 31 thereafter, the amount distributed under this section for the current fiscal year."

SECTION 1.4.(b) G.S. 105-521 is repealed effective July 1, 2012.

SECTION 1.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities shall be the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary shall then distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 1.6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~August 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective August 1, 2002, the county must notify the Secretary on or before July 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days' advance notice of the tax levy.

For taxes ~~levied on or~~that are to become effective after January 1, ~~2004~~,2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003~~.2002."

SECTION 1.9. Notwithstanding any other provision of law, for the months of August and September 2002, the administration and distribution of taxes collected under Article 44 of Chapter 105 of the General Statutes shall be in accordance with this section. For each of those months, the Secretary of Revenue shall create a separate account for the collection of taxes under Article 44 of Chapter 105 of the General Statutes. In each of those months, retailers shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a form separate from that on which the retailer reports other sales and use taxes collected. In each of those months, the Secretary shall allocate to each county that has imposed a tax under Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax collected under that Article. A county's allocation shall be determined by multiplying the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes for that month by a fraction. The numerator of the fraction is the amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to the county. The denominator of the fraction is the total amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to all counties that have imposed a tax under Article 44 of Chapter 105 of the General

Statutes. The Secretary shall distribute these taxes at the end of the quarter in accordance with G.S. 105-520(c).

SECTION 1.10. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to three hundred thousand dollars ($300,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.12.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article shall be known as the '~~Local~~ First One-Cent (1¢) Local Government Sales and Use Tax ~~Act.~~'Act."

SECTION 1.13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article shall be known as the ~~Additional Supplemental~~Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes without giving at least 10 days' public notice of its intent to adopt the resolution and without holding a public hearing on the issue of adopting the resolution.

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001~~,May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If

any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective July 1, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. VARIOUS FEES

SECTION 7.1.(a) G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows ~~him~~ the person additional time to pay the fee. The parolee may not be required to pay the fee before ~~he~~ the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that ~~he~~ the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this ~~section~~ subsection may be paid as prescribed by the supervising parole officer."

SECTION 7.1.(b) G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

SECTION 7.1.(c) G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which ~~he~~ the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within

two weeks from the date the person is ordered to perform the community service, and before ~~he begins his~~ the person may participate in the community ~~service, service~~ program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before ~~he~~ the person pays the fee by the court in which ~~he~~ the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin ~~his~~ community service before the fee is paid by the official or agency representing the State in the agreement.

~~Fees collected pursuant to this subsection shall be deposited in the General Fund.~~"

SECTION 7.1.(d) This section becomes effective October 1, 2002, and applies to fees assessed or collected on or after that date.

SECTION 7.2.(a) G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 7.2.(b) G.S. 15A-1368.4(f) reads as rewritten:

"(f) Required Supervision Fee. – The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

SECTION 7.2.(c) G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

SECTION 7.2.(d) This section becomes effective October 1, 2002, and applies to supervision fees assessed or collected on or after that date.

SECTION 7.3.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the same amount as the General Court of Justice fee imposed under G.S. 7A-304(a)(4) for cases in the district court. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the State Treasurer.

(b) Each criminal case filed in the General Court of Justice and resolved through referral to a community mediation center shall include, as a part of the resolution, an agreement on which of the parties shall be responsible for the payment of the dispute resolution fee assessed under this section. Before providing the parties with a signed copy of the mediation agreement, the community mediation center shall require proof that the dispute resolution fee has been paid as required by subsection (a) of this section."

SECTION 7.3.(b) Each community mediation center shall maintain records as to the number of cases in which dispute resolution fees are assessed and paid. The Mediation Network of North Carolina shall collect this information from each center annually.

Each community mediation center shall also maintain records as to the source of referral for all court-referred cases. Each center receiving State funds shall use a standardized form and methodology to determine the referral source and report that information annually to the Mediation Network of North Carolina.

The Mediation Network shall report by March 15, 2003, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the fees collected year-to-date and the sources of referral of court-referred cases during the 2002-2003 fiscal year.

SECTION 7.3.(c) This section becomes effective October 1, 2002, and applies to cases resolved on or after that date.

SECTION 7.4.(a) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. ~~A person found responsible for a violation of this section may not be assessed court costs.~~"

SECTION 7.4.(b) This section becomes effective October 1, 2002, and applies to costs assessed or collected on or after that date.

SECTION 7.5.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed

against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~sixty-five dollars ($65.00)~~ seventy-five dollars ($75.00) in the district court, including cases before a magistrate, and the sum of ~~seventy-two dollars ($72.00)~~ eighty-two dollars ($82.00) in the superior court, to be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...."

SECTION 7.5.(b) This section becomes effective October 1, 2002, and applies to costs assessed or collected on or after that date.

SECTION 7.6.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The cost of expunging such records shall be taxed against the petitioner.~~"

SECTION 7.6.(b) G.S. 15A-145 is amended by adding a new subsection to read:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(c) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The costs of expunging such records shall be taxed against the petitioner.~~"

SECTION 7.6.(d) G.S. 15A-146 is amended by adding a new subsection to read:

"(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(e) G.S. 90-96 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(f) This section becomes effective October 1, 2002, and applies to petitions filed on or after that date.

SECTION 7.7.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"(15) To establish a fee to cover the cost of analyzing clinical Pap smear specimens sent to the State Laboratory by local health departments and State-owned facilities and for reporting the results of the analysis. This fee shall be in addition to the charge for the Pap smear test kit."

SECTION 7.7.(b) This section is effective when it becomes law.

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

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

section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under

this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 8.7. The provisions of this Part are severable. If any provision of this Part is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Part that can be given effect without the invalid provision.

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1292

Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-PCS4730-LYxf-37

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. RESERVED

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001,~~May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) A percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. For amounts allowed for taxable years beginning before January 1, 2004, the percentage is one hundred percent (100%). For amounts allowed for taxable years beginning on or after January 1, 2004, the percentage is eighty percent (80%).

In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected

that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year.

These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) A percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. For amounts allowed for taxable years beginning before January 1, 2004, the percentage is one hundred percent (100%). For amounts allowed for taxable years beginning on or after January 1, 2004, the percentage is eighty percent (80%).

In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year.

These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b)

of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

PART IX. CLOSE CORPORATE TAX LOOPHOLES

SECTION 9.1.(a) G.S. 105-130.4(a)(1) reads as rewritten:

"(1) "Business income" means ~~income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.~~ all income that is apportionable under the United States Constitution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) The sales factor is a ~~fraction, the~~fraction. The numerator of ~~which~~ the fraction is the total sales of the corporation in this State during the income ~~year, and the~~year other than sales to the United States government. The denominator of ~~which is the total sales of the corporation everywhere during the income year.~~ the fraction is the total sales of the corporation everywhere during the income year except for (i) sales to the United States government, (ii) sales that are in a state in which the taxpayer is not taxable, and (iii) sales that are in a foreign country when that country does not subject the taxpayer to a tax on or measured by profits or income. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies. It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"§ 105-114.1. Limited liability companies.

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i) a~~A percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations. ~~under the limited liability company's governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or

individual income tax to the extent the underpayment was created or increased by this act.

Senate Bill 1292 (HPCS): Budget Revenue Act of 2002

BILL ANALYSIS

Committee: House Finance
Date: July 3, 2002
Version: House PCS

Introduced by: Senators Kerr and Hoyle
Summary by: Finance Team

SUMMARY: The proposed House Committee Substitute for Senate Bill 1292 contains the following tax changes:

- *PART I – Reserved.*
- *PART II delays the income tax breaks enacted in 2001. This Part is identical to the Senate version.*
  - *The phase-in of the increase in the standard deduction for married filing jointly is delayed until January 1, 2003.*
  - *The phase-in of the additional child tax credit amount is delayed until January 1, 2003.*
- *PART III conforms North Carolina's tax laws to many of the federal tax law changes enacted in 2001 and 2002. Except for a reduction in the bonus depreciation add-back, this Part is identical to the Senate version.*
  - *Conform to the educational provisions in EGTRRA.*
  - *Conform to the pension tax provisions in EGTRRA.*
  - *Conform to the net operating loss provisions in EGTRRA.*
  - *Conform to the miscellaneous provisions in EGTRRA and in the Economic Stimulus Bill.*
  - *Conform to the increased estate tax limits in EGTRRA.*
  - *The bill does NOT conform to either the phase-out of the State estate death tax credit in EGTRRA or the accelerated depreciation provisions in the Economic Stimulus Bill.*
- *PART IV provides that local governments will bear a portion of the costs associated with the collection of the drug tax. These costs are currently borne entirely by the General Fund. Except for a correction to the effective date, this Part is identical to the Senate version.*
- *PART V sets the insurance regulatory fee at 6.5% for the 2002 calendar year. This rate is the same as the 2001 rate. This Part is identical to the Senate version.*
- *PART VI sets the public utility regulatory fee at 0.1% for the 2002-2003 fiscal year. It also sets the electric membership corporation regulatory fee at $200,000 for the 2002-03 fiscal year. These rates are the same as the rates established last year.*
- *PART VII is reserved.*

- ***PART VIII seeks to secure local revenues in two ways, listed below. This Part is identical to House Bill 1490 as it passed the House. It is similar to the corresponding provision in the Senate version.***[1]
  - ***It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.***
  - ***It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized by an act of the General Assembly.***
- ***PART IX closes three corporate tax loopholes, as described below. There is no corresponding provision in the Senate version.***
  - ***Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective beginning with the 2002 tax year.***
  - ***Provides that sales that no state has the right to tax are "thrown out" of the calculation of profits to apportioned among the states, thereby increasing the percentage apportioned to North Carolina for the purpose of corporate income taxation, effective beginning with the 2002 tax year.***
  - ***Tightens the 2001 legislation that was intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company, effective beginning with payments due in March 2003.***
- ***PART X enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. There is no corresponding provision in the Senate version.***

PART I: [RESERVED]

PART II: DELAY 2001 TAX BREAKS

Last session, the General Assembly enacted two income tax breaks to become effective for 2002 tax year[2]: elimination of the marriage tax penalty[3] and an increased tax credit for children. Part II of this bill delays the enactment of these tax benefits.

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[1] The Senate version lacks the conforming change to the electric cities statute, and lacks the extra requirement that the Governor needs General Assembly authorization before releasing any funds committed to local governments.
[2] S.L. 2001-424, as amended by S.L. 2001-476, 2001-497, and 2001-489.
[3] The so-called married tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry,

Last session, the General Assembly reduced North Carolina income taxes on married couples that claim the standard deduction[4] by increasing the amount of the standard deduction for married filers so that it would be twice that of a single taxpayer. Since 1989, the basic standard deduction for a single person in North Carolina has been $3,000 while that for a married couple filing jointly has been $5,000. The increase in the deduction enacted in 2001 is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so the 2001 act also phased it up from $2,500 to $3,000 over the 2002 and 2003 tax years. Part II of this bill would delay by one year the phase-in of the increased deduction, so that it would occur over the 2003 and 2004 tax years.

In 2001, the General Assembly increased the $60 tax credit per child to $75 for the 2002 tax year and to $100 for the 2003 tax year. Part II of this bill would delay the phase-in of the credit increase until the 2003 and 2004 tax years. The 1995 General Assembly enacted the tax credit of $60 per child for taxpayers who have dependent children and have family adjusted gross income below $100,000 for a married couple and $80,000 for a head of household. Neither the 2001 act nor this bill changes the income thresholds. The credit is in addition to the federal and state tax credits or exclusions for child care expenses. The credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

PART III: UPDATE IRC REFERENCE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[5] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[6] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

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a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[4] Roughly 70% of North Carolina taxpayers claim the standard deduction.

[5] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[6] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Congress enacted two bills that have changed the Code significantly since January 1, 2001:

- The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), enacted on June 7, 2001, includes numerous changes to the taxation of pension benefits, accounts, distributions, and rollovers; of education initiatives; and of estates. All of the provisions of EGTRRA will expire on December 31, 2010, unless the provisions are renewed or modified by Congressional action.[7]
- The federal Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004, and an extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002 from two years to five years.

Both of these acts will substantially affect a taxpayer's federal taxable income. Since North Carolina begins its corporate and individual income tax calculations with federal taxable income, these acts also have a substantial impact on North Carolina's tax revenues to the extent the State chooses to conform to those changes.

Part III of this bill rewrites the definition of the Code to change the reference date from January 1, 2001, to May 1, 2002. It then provides that a taxpayer must add to federal taxable income the amount allowed as an accelerated depreciation deduction under section 168(k) or 1400L of the Code and that a taxpayer's estate tax liability is determined without regard to the phase-out of the state death tax credit. In effect, Part III would do the following:

- Conform to all of the pension tax changes in the Code.
- Conform to all of the education initiatives in the Code.
- Conform to the increased estate tax exemption limitations.
- Not conform to the phase-out of the state death tax credit.
- Conform to the extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002.
- Delay the accelerated 30% bonus depreciation allowance.

Pension Tax Provisions: This Part conforms North Carolina's tax treatment of pension benefits and distributions to federal law. Some of the more notable changes EGTRRA made to the pension laws include:

- It allows taxpayers to contribute more to their tax-deferred retirement accounts. It gradually increases the amount that may be contributed to a 401(k), 403(b), and 457 accounts between 2002 and 2006. The contribution limit will increase to $15,000 in 2006. Starting in 2007, the limit will be indexed for inflation in $500 increments. It also allows persons who are 50 or older to make an additional catch-up contribution to their tax-deferred retirement accounts.
- It increases the amounts that may be contributed to both traditional IRAs and Roth IRAs from $2,000 in 2001 to $3,000 in 2002. This amount gradually increases to $5,000 for 2008. After 2008, this amount will be indexed annually for inflation. It also allows people over the age of 50 to make catch-up contributions to an IRA.

[7]The Congressional Budget Act of 1974 mandates this sunset provision.

- It modifies the distribution rules for governmental 457 plan participants so that their deferred compensation funds will be taxed when they receive the distribution, not when it is made available to them.
- It repeals the coordination of deferrals between 457 and other elective deferral plans. Under former law, the maximum deferral amount for a 457 plan was reduced dollar for dollar by any contribution made to other types of retirement plans. The tax law change means that a person may defer the maximum annual contribution limit to a 457 plan as well as the maximum amount in a 401(k) or 403(b) plan.
- It expands the types of eligible tax-free rollover distributions to include distributions from qualified plans, 403(b) annuities, and 457 plans to other such plans and distributions from IRAs to qualified plans, 403(b) annuities, and 457 plans.
- It allows a surviving spouse to roll over distributions from a deceased spouse's plan to his or her own plan. Prior to this change, the tax-free rollover had to be made to an IRA.

Education Tax Provisions: This Part conforms North Carolina tax law on education incentives to the federal changes enacted last year. The more notable tax changes affecting education incentives include:

- It increases the annual maximum contribution limit to an education IRA from $500 to $2,000 per beneficiary.
- It allows education IRAs dollars to be used to cover expenses of students in grade, middle, and high schools.
- It eases the restrictions and limitations when using an Education IRA with other education initiatives, such as the Hope or Lifetime Learning tax credit.
- It moves the annual contribution deadline for Education IRAs from December 31 to April 15 of the following year.
- It provides that distributions from Section 529 Plans will be income-tax free up to the amount that is used to pay qualified higher education expenses.[8] Under former law, participants enjoyed only the benefit of tax-deferred contributions and investment growth.
- It allows a person to transfer 529 plan credits from one program to another for the benefit of the same beneficiary without incurring a taxable event.
- It extends the deduction for employer-paid college expenses to include graduate courses.

Estate Tax Provisions: North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced its inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government.[9] EGTRRA made two changes that affect the estate tax:

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[8] North Carolina currently allows tax free distributions for North Carolina plans. Section 3.5 of the bill repeals the State deduction.

[9] As of July 1, 2001, 36 other states, plus the District of Columbia, impose only the "pick-up tax".

- It phases out the estate tax over the next eight years by increasing the exclusion amount from $675,000 in 2001 to $1 million in 2002-03, $1.5 million in 2004-05, $2 million in 2006-08, and $3.5 million in 2009. There is no need for an exemption amount after 2009 since the tax is repealed in 2010. However, the tax is scheduled to reapply in 2011 unless a future Congress makes the repeal permanent. If the tax were reinstated in 2011, the exclusion amount would be $1 million. **This bill would conform North Carolina's exemption limits to the federal exemption limits to ensure that estates in North Carolina do not have to pay State tax if there is no federal tax due.**
- It phases out the state death tax credit over the next four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and repealing it entirely in 2005. **This bill does NOT conform to the phase out of the state death tax credit for two years.**[10] Therefore, under this bill an estate of a decedent dying on or after January 1, 2002, and before January 1, 2004, would owe North Carolina estate tax to the same extent that it would be owed without regard to the phase-out of the credit. The January 1, 2004, sunset ensures that the State will have to revisit this issue next year.

Because North Carolina's estate tax is based upon the federal credit for state death taxes, the repeal of the state death tax credit in 2005 and the ultimate repeal of the federal estate tax in 2010 will mean that the State must decide whether to replace or repeal its estate tax in the future.

Accelerated Depreciation Provisions: Under the Job Creation and Worker Assistance Act of 2002, a taxpayer is allowed an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 11, 2001, and before September 11, 2004. The taxpayer is still entitled to the normal first-year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation. This provision affects both corporate and individual income taxpayers.

The change in federal law results in a taxpayer recovering the basis in the asset sooner than under former law; however, over the life of the asset the taxpayer still receives the same benefit. This bill does not conform State law to the accelerated depreciation schedule allowed under federal law.[11] However, under this bill a taxpayer will continue to be able to deduct the same amount of an asset's basis under both federal and State law; it is just that the timing of the

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[10] As of July 3, 2002 the following states have acted to decouple from the phase-out of the state death tax credit for some period of time or have introduced legislation to that effect: Connecticut, Illinois, Maine, Maryland, Minnesota, Nebraska, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The following states will remain decoupled unless they take legislative action: Arkansas, District of Columbia, Kansas, New York, Oklahoma, Oregon, Virginia and Washington. (Source: Center on Budget and Policy Priorities)

[11] As of July 3, 2002, the following states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin. In addition, New York City has decoupled from the bonus depreciation allowance. Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities)

deduction will differ. To accomplish this decoupling from the federal accelerated bonus depreciation, the bill does two things:

- It provides that a taxpayer must add back to federal taxable income a percentage of the additional 30% accelerated depreciation in the year the accelerated depreciation is claimed for federal purposes.[12] The percentage is 100% for taxable years before 2004 and 80% for the 2004 taxable year. This add-back means that for State tax purposes, a taxpayer would deduct less in tax years 2001-2005 than it would have deducted if the State conformed to the accelerated depreciation law. The amount of the deduction will be the normal first year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation amount allowed under federal law (plus, in 2004, 20% of the bonus deprecation).
- In tax years beginning on or after January 1, 2005, it provides that the taxpayer may deduct from federal taxable income the amount of the add-back, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years - the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the amount of revenue the State receives over the affected years.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV of this bill would allocate to local governments 70% of the State's expenses in collecting the unauthorized substance tax. The expenses would be drawn from local sales tax revenues. Under current law, the following expenses are deducted from local sales tax distributions: costs of the Property Tax Division, costs of the Property Tax Commission, the costs of the Institute of Government in operating a training program in property tax appraisal and assessment, and the costs of the Local Government Commission.

The General Assembly first imposed the unauthorized substances tax in 1989 to generate revenue for State and local law enforcement agencies and for the General Fund. Seventy-five percent of the tax collected is distributed to the State or local law enforcement agency that conducted the investigation that led to the tax assessment. The remaining 25% is credited to the General Fund. This bill does not change this revenue allocation.

PART V. INSURANCE REGULATORY CHARGE

[12] For tax years beginning before October 1, 2001, the add-back must be taken in the first taxable year beginning on or after October 1, 2001, so that the taxpayer will not recognize any retroactive tax increase.

Part V of this bill sets the insurance regulatory charge at the same rate as last year's rate: 6.5% for the 2002 calendar year. The insurance regulatory charge is a tax that was enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's premiums tax liability. The insurance regulatory charge is imposed on insurance companies, health maintenance organizations, and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations and health maintenance organizations do not pay premiums tax at that rate.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the tax rate for the public utility regulatory fee for the 2002-2003 tax year at the same rate as last year's rate: 0.1%. This rate must be set by the General Assembly each year. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of SL 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

Part VI also sets at $200,000 for the 2002-2003 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. This is the same rate that was in effect for the 2001-2002 fiscal year. The North Carolina Electric Membership Corporation is the only electric membership corporation that fits this description. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the

corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Corporation will be passed on to its member electric membership corporations.

PART VII: [RESERVED]

PART VIII: SECURE LOCAL REVENUES

Sections 8.1 through 8.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

- Section 8.1 - Beer and wine tax.
- Section 8.2 - Franchise gross receipts tax.
- Section 8.3 - Piped natural gas tax.
- Section 8.4 - Sales tax on telecommunications.
- Section 8.5 - Powell Bill funds.
- Section 8.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 8.7 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the

funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

PART IX: CLOSE CORPORATE TAX LOOPHOLES

This Part closes three corporate tax loopholes that allow some corporate profits to escape taxation and give corporate tax planners an opportunity to avoid existing taxes on corporate income and assets. The first loophole is caused by the definition of business income used in the corporate income tax law; the second loophole is caused by the treatment of certain sales in the formula for apportioning business income to the State for corporate income tax purposes; and the third loophole is caused by the different franchise tax treatment of corporations and limited liability companies.

Definition of Business Income: Section 9.1 of this Part amends the definition of "business income" to include all income that is apportionable under the U.S. Constitution, effective for taxable years beginning on or after January 1, 2002.

Corporations that do business in more than one state divide up their income among those states for income-tax purposes. Business income is apportioned based on a formula that takes into account how much sales, property, and payroll the corporation has in each state. Nonbusiness income is allocated to a state based on its connection with that state. In the most basic terms, nonbusiness income could be described as income that is earned in an unrelated sideline activity of the corporation.

As an analogy, each interstate corporation's income is in two "pies" - a business income pie that is divided up among the states in which it does business, and a nonbusiness income pie that is given entirely to the state it is connected to.

In an ideal system, all states would follow the same rules for dividing up interstate corporations' income for tax purposes, so that no more and no less than 100% of every corporation's net income would be subjected to state income tax. However, different states have different laws and even when the laws are the same, they may be interpreted differently. In theory, this can result in the taxation of more than 100%, as well as less than 100%, of a corporation's net income. In practice, corporate tax planners take the opportunity to create "nowhere" income - income that no state can tax. Instead of each state receiving its piece of the business income pie, some pieces are thrown away. Thus, although a corporation may do substantial business in North Carolina, much of its otherwise taxable business income may be characterized as nonbusiness, so that North Carolina gets no piece of it.

These tax avoidance schemes are possible not only because different states have different laws, but also because states such as North Carolina have laws that are vague or too narrow. In North Carolina, income is business income if it relates to the regular trade or business of the taxpayer. This definition is vague and narrower than what is allowed under the United States Constitution. If North Carolina is entitled to tax a significant percentage of a corporation's

business income, the corporation may try to shift much of its income into the nonbusiness pie, which North Carolina does not share in. This may be true even though the corporation has deducted as a business expense the same items that it now claims are not business items when the time comes to pay tax on profits. Recent court decisions in North Carolina have upheld this tax avoidance technique. Examples of the types of business income that corporations most often recharacterize are rents, royalties, gain or loss from the sale of property, interest, and dividends.

This proposal would change the definition of business income to include any income that the United States Constitution allows a state to treat as business income. This eliminates the current statute's vagueness and narrowness, which allow it to be used by corporations to create "nowhere" income that should otherwise be taxable in North Carolina. One effect of this change will be to include income from extraordinary events, such as a liquidation of a division, in apportionable income, consistent with the Department of Revenue's historical position, as illustrated by its administrative rules, before the North Carolina Supreme Court's decision in *Lenox v. Tolson.* A corporation's income earned out of state from unrelated business activity that makes up a discrete business enterprise would continue to be nonbusiness income that cannot be apportioned – it would continue to be allocated to the state to which it is connected.[13]

26 states including North Carolina use the vague, unnecessarily narrow definition of business income.

18 states have a broader definition of business income:

- 5 states have the law proposed in Section 9.1 of the bill (define business income as all that the U.S. Constitution allows state to apportion):
  1. Florida
  2. Iowa
  3. Minnesota
  4. Pennsylvania
  5. Texas
- 13 states apportion all corporate income. These states' approach would gain less revenue than the proposal in Section 9.1 because it would relinquish the right to tax true nonbusiness income of North Carolina-headquartered businesses. The 13 states include:
  1. Georgia
  2. South Carolina
  3. Virginia

In 1996, an economist with the Federal Reserve Bank of Boston published a study of the effect of state tax policy on economic development. The study looked at various manufacturing industries in 22 states – including most major manufacturing states – and found no statistically significant correlation between business tax burdens and the location of new investment.

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[13] Several examples of the effect of this proposal are at the end of this summary.

Throw-out Rule for Corporate Apportionment: Section 9.2 of Part IX would exclude certain out-of-state sales from the base of the sales factor used to apportion business income to North Carolina, effective beginning with the 2002 tax year.

Like the previous provision, this proposal would bring under North Carolina's corporate income tax a part of a corporation's "nowhere" income that is currently not being taxed by any state. Under current law, the formula for determining how much of the business income pie goes to North Carolina focuses on sales, payroll, and property in North Carolina. The sales factor is a ratio of sales in North Carolina to all sales everywhere. Sales are considered to be "in" the state where the purchaser receives the item. Under the sales factor formula, the more sales a corporation has that are not in North Carolina, the smaller the sales factor used to calculate North Carolina's piece of the business income pie - because the formula assumes those sales will go into another state's piece of the business income pie.

But some sales don't go into any state's piece of the pie. That may be because they are made in a state that cannot tax the corporation or because they are made to the federal government and so one cannot tell which state they are made in. Without the throw-out rule (or a similar rule called the throw-back rule), 50% to 100% of the profits of a state's corporations may be "no where" income, according to a 2002 article published by Michael Mazerov of the Center on Budget and Policy Priorities.

Under Section 9.2 of the bill, "nowhere" sales (sales where the purchaser is the federal government or is located in a state that cannot tax the corporation or a country that does not tax the income) are excluded from the sales factor formula so that they do not reduce the ratio that determines how much of a corporation's business income North Carolina can tax. Thus, if another state cannot consider the sales in calculating its piece of the pie, they will not escape tax entirely - instead, there will be an increase in North Carolina's piece of the pie. If every state adopted the throw-out rule, then 100% of a corporation's interstate income would be taxed - there would be no "nowhere" income.

Here is an example of the throw-out rule. Corporation X has 20% of its sales in North Carolina, 20% of its sales in Virginia, and 60% of its sales in Tennessee. The corporation has no nexus with Virginia so Virginia cannot tax its income. Tennessee, like North Carolina current law, has no throw-out or throwback rule. Under current law, the sales factor for North Carolina would be 20% divided by 100%, or 1/5. The sales factor for Tennessee would be 60% divided by 100%, or 3/5. There is no sales factor for Virginia. Thus, the sales factors for North Carolina and Tennessee add up to only 4/5 of the company's sales. As a result, less than 100% of the company's business income will be apportioned to those states for taxation. If North Carolina adopted the throw-out rule, the 20% of sales to Virginia are subtracted from the denominator of the sales factor. Thus, North Carolina's sales factor would be 20% divided by 80%, or 1/4. Because 1/4 is more than 1/5, a larger proportion of the corporation's income would be allocated to North Carolina. If Tennessee also adopted the throw-out rule, its sales factor would be 60% divided by 80%, or 3/4. Thus, the sales factors for the two states would add up to 100%

and all of the corporation's sales would be considered in apportioning its business income between the two states.

The throw-out rule and its sibling, the throwback rule, are not new. They predate the 1959 federal law limiting a state's ability to impose corporate income tax on corporations whose only connection with the state is soliciting orders there. The following information on states that do and do not have the throw-out rule or the throwback rule comes from Michael Mazerov of the Center on Budget and Policy Priorities. After the name of each state is listed the percent increase or decrease of manufacturing jobs in that state during the period 1995-2000. For that period, NC's manufacturing jobs decreased 9.5%.

21 States, including North Carolina, do NOT have a throw-out or throwback rule. These states include:

State	Job Loss or Gain
• Florida	0.0%
• Georgia	+0.1%
• South Carolina	-8.0%
• Tennessee	-5.7%
• Virginia	-3.5%

The following 25 States HAVE the throw-out or throwback rule. [14] (The underlined states have the throw-out rule.)

State	Job Loss or Gain
• Alabama	-7.9%
• Alaska	-18.3%
• Arkansas	-3.1%
• California	+8.4%
• Colorado	+6.7%
• Hawaii	+1.2%
• Idaho	+8.2%
• Illinois	-1.8%
• Indiana	+0.6%
• Kansas	+9.8%
• Maine	-6.5%
• Mississippi	-9.3%
• Missouri	-4.1%
• Montana	+6.0%
• New Hampshire	+3.0%

[14] Washington, D.C. also has the throwback rule, bringing the total to 26. In addition, Massachusetts technically has the throwback rule but Mazerov points out that its rule is full of loopholes so that it is not effective.

- New Jersey[15] -7.4%
- New Mexico -5.1%
- North Dakota +17.4%
- Oklahoma +6.7%
- Oregon +6.0%
- Texas +5.2%
- Utah +5.6%
- Vermont +8.4%
- West Virginia -2.1%
- Wisconsin +2.5%

According to Mazerov, this information shows that states with the throw-out and throwback rules (and the royalty loophole closing North Carolina enacted last year) are disproportionately represented among states with net manufacturing gains.

LLC Franchise Tax: In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole that allowed corporations to avoid franchise tax on their assets by transferring their assets to a controlled limited liability company (LLC). Corporations pay franchise tax on their assets but LLCs do not pay franchise tax on their assets. Tax planners helped many corporations avoid most of the franchise tax they would otherwise owe by setting up an LLC for the purpose of holding the assets on behalf of the corporation. Although the corporation's business continued in the same way, the corporation eliminated most of its franchise tax through this paper transaction.

The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[16] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

Section 9.3 of this Part broadens the approach of the 2001 legislation to include "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. This section would become effective beginning with payments due in March 2003. "Related members" is a term defined in the "trademark royalties" provision of last year's loophole bill and includes shareholders, partnerships, etc.

If a corporation and its related members together indirectly own at least 70% of an LLC's assets, this Part provides that each corporation pays franchise tax on its relative share of the LLC's

[15] New Jersey just enacted the throwback rule in 2002.

[16] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

assets. The relative share is calculated after excluding those related members who are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme. The language of the bill accomplishes this by stating that the following percentage of the LLC's assets are taxable to the corporation: "The attributable percentage is equal to the percentage of the limited liability company's assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations."

Here is an example:

A parent corporation, its subsidiary, and a major shareholder of the parent form a partnership to own an LLC that will own assets on behalf of the parent and subsidiary. The LLC's documents provide that upon dissolution its assets are distributed as follows:

- Parent Corporation: 20%
- Subsidiary Corporation: 45%
- Shareholder: 35%

Under current law, the assets would remain free of franchise tax. If this Part were enacted, the parent corporation would pay franchise tax on 31% of the assets and the subsidiary corporation would pay franchise tax on 69% of the assets. Those are their relative shares of the total once you exclude the non-corporate owner.

The approach taken by this Part is much broader than the 2001 legislation and is intended to anticipate the creative paper relationships tax planners may devise to try and avoid the franchise tax. The breadth of the provision is such that it could apply to a "legitimate" situation, such as an individual who is the sole shareholder of a corporation and who later forms an LLC with an associate. Under this proposal, the corporation would pay tax on the LLC's assets. Unfortunately, there does not appear to be a way to distinguish this type of situation from one in which the corporation is manipulating relationships to avoid its franchise tax. With different tax treatment of similar entities, tax planners can try to manipulate relationships to fall into the untaxed category. Because corporations and LLCs are similar, there may not be a strong policy reason to treat them differently for franchise tax purposes.

PART X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

Part X of this bill enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two counties and 25% for buildings located in other tiers. In 2000, the General Assembly enacted legislation providing that the 75% credit is also allowed for buildings located in one of 26 counties that sustained severe or moderate

damage from a hurricane in 1999. This increase in the amount of the credit was made effective for buildings that are allocated a federal credit on or after January 1, 2001. The federal tax credits are allocated in December of each year. Thus, those taxpayers who made investments in hurricane counties and were allocated federal credits in December 2000 are not eligible for the enhanced State credit. This act would backdate the effective date for eligibility for the enhanced State credit to from 2001 to 2000, thereby including those who were allocated federal credits for investments in hurricane counties during 2000.

EXAMPLES RELATING TO THE DEFINITION OF "BUSINESS INCOME" IN SECTION 9.1.

Investment in an unrelated corporation. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A buys stock in Corporation B. Corporation A and Corporation B are not involved in the same industry and the stock is held for investment purposes only. Corporation A does not actively participate in the management of Corporation B and does not integrate operations with Corporation B. Corporation A recognizes no economies of scale due to its ownership interest in Corporation B. Corporation A and B are not unitary. Corporation A sells the Corporation B stock and recognizes a capital gain. Under this bill, the capital gain is not apportionable to North Carolina. (See: Allied Signal, Inc. v. Director, Division of Taxation, 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992).) This income would also be nonapportionable, non-business income under current North Carolina law.

Reversion of excess pension funds. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A has made contributions to a defined-benefit employee pension plan for a number of years and has deducted these contributions from business income. The plan is found to be over-funded and a reversion of excess pension funds is allowed. The reverted funds are ordinary income for federal tax purposes. Under current North Carolina law, because the reversion is not a transaction that takes place in the regular course of business and because the right to a reversion is not an integral part of the corporation's regular course of business, the reverted funds are treated as non-business income and would not be subject to apportionment. (See: Union Carbide v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).) Under this bill, the reversion would be income subject to apportionment because it is income derived from a unitary business.

Liquidation of wholly-owned subsidiaries. Corporation X is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations A, B, and C are wholly owned subsidiaries of Corporation X. Corporations A, B, and C are domiciled in State 1 and have no business operations in North Carolina. Corporation X liquidates Corporations A, B, and C and immediately distributes the proceeds of the liquidations to Corporation X's shareholders. Corporation X recognizes a capital gain from the liquidations.

Liquidation of Corporation A - There is centralized management between Corporations X and A and their operations are functionally integrated. Corporations X and A therefore constitute a

unitary business, part of which is conducted in North Carolina. Under this bill, the proceeds of the liquidation of Corporation A would be subject to apportionment.

Liquidation of Corporation B - Corporations X and B are engaged in the same general line of business. Corporation B supplies Corporation X with the majority of a product used in Corporation X's manufacturing operations. Corporation B therefore performs an operational function in Corporation X's business. Under this bill, the proceeds of the liquidation of Corporation B would be subject to apportionment.

Liquidation of Corporation C - There is no centralized management, functional integration, or economies of scale between Corporations X and C, and Corporation C performs no operational function in Corporation X's business. Corporation C is not part of Corporation X's unitary business. Under this bill, the proceeds of the liquidation would not be subject to apportionment.

(Note: This bill removes the confusion under current law created by the decision in Lenox v. Tolson regarding the apportionability of income from the liquidation of an operating division or subsidiary. In *Lenox v. Tolson*, the Court found that the liquidation of a separate line of business was not a transaction in Lenox's regular course of business and was not a disposition of property integral to Lenox's regular trade or business. The Court held that the proceeds were therefore nonbusiness income and not apportionable. The Court, however, failed to analyze whether the acquisition or management of the property constituted integral parts of the corporation's regular trade or business, an analysis required under the actual language of the statute, the Department's administrative rules, and the Court's prior decision in *Polaroid v. Offerman*. As the dissent in Lenox points out, the property of ArtCarved was an integral part of Lenox's regular trade or business and the proceeds from the liquidation of this property should therefore have been apportionable business income under previous opinions of the Court.)

Receipt of dividends from wholly-owned subsidiaries. Corporation A is a retailer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations B, C, and D are wholly owned subsidiaries of Corporation A. Corporations B, C, and D are engaged in retailing in foreign countries. Corporation A has no functional integration and no centralized management with Corporations B, C, and D. Corporation A realizes no economies of scale due to its ownership of Corporations B, C, and D. Corporations B, C, and D are therefore not part of a unitary business with Corporation A. Corporations B, C, and D perform no operational function in Corporation A's business. Corporation A receives dividends from Corporations B, C, and D. Therefore, under this bill, as well as under current North Carolina law, this income would not be apportionable. (See: F.W. Woolworth Co. v. Taxation and Revenue Dept. of NM, 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819 (1982).)

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: July 16, 2002

TO: House Finance Committee

FROM: Dave Crotts, Linda Millsaps, and Richard Bostic, et al.
Fiscal Research Division

RE: SB 1292 House PCS CSLYxf-37 v. 33– Budget Revenue Act of 2002

FISCAL IMPACT

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

($million)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues					
General Fund					
-Delay Child Tax Credit	19.8	34.9			
-Delay Standard Deduction	31.9	12.6			
-Drug Tax Receipt*	.9	.9	.9	.9	.9
-Conform Internal Rev. Code	(16.9)	(25.5)	(49.7)	(76.9)	(77.3)
-Estate Tax Credit	(5.5)	(7.3)	(17.7)	(5.9)	
-Accelerated Depreciation**	38.2	68.8	22.8	0	(42.3)
-Conform Business Income	70.0	50.0	53.7	56.7	59.5
-Correct LLC Franchise Tax	20.0	21.2	22.5	23.8	25.2
-Corporate Throwout Rule	11.0	11.7	12.4	13.1	13.9
-Low Income Housing Credit	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)
TOTAL GENERAL FUND	**167.2**	**165.1**	**42.7**	**9.5**	**(22.3)**
Utilities Special Fund	11.9				
Insurance Reg. Fund	25.0				
Local Governments					
-Drug Tax Deduction	(.9)	(.9)	(.9)	(.9)	(.9)

*Department of Revenue will deduct 70% of costs of Unauthorized Substance Tax Division from sales tax proceeds.

**The impact of the changes is essentially revenue neutral over the long-term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of the asset. Thus, there will be substantial revenue losses starting in FY 2006-07.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Insurance, Utilities Commission, NC Housing Finance Agency, Local Governments.

EFFECTIVE DATE: Section 2.1(a) (Married Standard Deduction $5,500) effective for taxable years beginning on or after January 1, 2003; Section 2.1(b) (Married Standard Deduction $6,000) effective for taxable years beginning on or after January 1, 2004; Section 2.2(a) (Child Care Credit $75) effective for taxable years beginning on or after January 1, 2003; Section 2.2(b) (Child Credit $100) effective for taxable years beginning on or after January 1, 2004; Sections 3.2 and 3.3 (Accelerated Depreciation) effective for taxable years beginning on or after January 1, 2002; Section 3.4 (Estate Tax) effective on or after January 1, 2002 and applies to estates of decedents dying on or after that date and is repealed for estates of decedents dying on or after January 1, 2004; Section 4.1 (Unauthorized Substance

Tax) is effective June 30, 2002; Section 6 (Utility Regulatory Fee) is effective July 1, 2002; Section 9.1(a) and Sections 9.2(a) are effective for tax years beginning on or after January 1, 2002; Sections 9.3(a) and (b) are effective for taxes due on or after January 1, 2003. All other sections are effective when they become law.

BILL SUMMARY:

Parts I and VII of the bill are reserved.

Part II of the bill delays two tax breaks authorized in 2001. Section 2.1(a) delays the increase from $5000 to $5500 in the standard deduction for married filing jointly from tax year 2002 to 2003. Section 2.1(b) delays the increase from $5500 to $6000 in the same deduction from tax year 2003 to 2004. Section 2.2(a) delays the increase in the child tax credit from $60 to $75 from tax year 2002 to 2003. Section 2.2(b) delays the increase in the child tax credit from $75 to $100 from tax year 2003 to 2004.

Part III of the bill updates state statutory references to the Internal Revenue Code from January 1, 2001, to May 1, 2002, with exceptions for accelerated depreciation and the estate tax credit. This action would conform state tax laws to federal tax changes made in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Job Creation and Worker Assistance Act of 2002.

Under current law, North Carolina conforms to the federal estate tax in effect as of January 1, 2001. Thus, our pickup tax does not automatically tie into the 2001 federal changes. The estate tax language in this bill, coupled with the Internal Revenue Code conformity update provisions, would link North Carolina to the effect of the higher federal credits on the pickup tax but not to the phase-out of the death tax credit. The practical effect of the language in the bill is to ensure that with respect to the phased up federal credit for state death taxes, estates in North Carolina do not have to pay state tax if there is no federal tax due.

In the bonus depreciation conformity section of the bill, an add-back equal to 100% of bonus depreciation for the 2001-2003 tax year and 80% for 2004 is included in taxable income. The add-back is then offset by a subtraction from income starting with the 2005 tax year. This subtraction takes place in installments over a 5-year period.

Part IV allows the Department of Revenue to deduct 70% of the cost of the Unauthorized Substance Tax Division from the sales and use tax proceeds distributed to local governments.

Part V of the bill addresses the annual establishment of the insurance regulatory fee. Section 5(a) sets the insurance regulatory charge at 6.5%. The rate remains the same as in the previous year.

Part VI, Section 6(a) sets the regulatory fee rate for the Public Utilities Commission at 0.1%. This rate must be set annually and is the same as the previous year. Section 6(b) sets the regulatory fee for the electric membership corporations at a flat $200,000. This fee has remained the same since it was first imposed in 1999.

PART VIII attempts to limit the Governor's ability to withhold the local portion of revenues shared with cities and counties by declaring these funds local revenue. Specifically

Section 8.1 addresses beer and wine taxes, while Section 8.2 discusses the franchise tax on electricity. Section 8.3 considers the tax on piped natural gas. Section 8.4 addresses the tax on telecommunications. Section 8.5 considers the Highway Fund and Highway Trust Funds allocated as Powell Bill funds. Section 8.6 addresses the distribution to electric cities. Section 8.7 adds intent language to clarify that the funds committed or appropriated by the legislature for local governments shall not be reduced unless the governor has exhausted all other sources of revenue for the state. It also states that the Governor must be authorized by the legislature to withhold these funds.

Part IX makes the following corporate tax changes:
BUSINESS INCOME. Sec. 9.1 of the bill expands the definition of "business income" to include all of the income that may be apportioned under the U.S. Constitution. The practical effect of the provision is to include in the North Carolina income tax base more income from irregular events, such as the sale of a subsidiary.

THROWOUT RULE. For most multistate corporations, nationwide taxable income is apportioned among the states based on a three-factor formula that compares payroll in a state, property in the state, and sales within the state to the national totals for each of the respective factors. Thus, the sales factor would divide sales within North Carolina (numerator) by total national sales (denominator). Section 9.2 of the bill modifies the sales factor by taking out sales to the U.S. government from both the numerator and denominator and adding to the denominator "sales that are in a state in which the taxpayer is not taxable" during the tax year. In addition, the denominator would not include sales that are in a foreign country when that country does not subject the taxpayer to a tax on, or measured by, profits or income.

LLC FRANCHISE TAX. Legislation adopted by the 2001 General Assembly attempted to close a loophole that allowed corporations to avoid the state franchise tax by transferring potentially taxable assets to a controlled limited liability company (LLC). This occurs because LLCs do not pay franchise tax on their assets. The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[1] at least 70% of the LLC's assets. However, if the corporation interposed a partnership between it and the LLC holding its assets, then the 2001 change would not apply and the assets would continue to escape taxation.

Sec. 9.3 of the bill broadens the 2001 legislation to include "related members" (other entities and individuals) who may form a partnership with one or more corporate entities to own the LLC to which the corporate assets are transferred. "Related members" includes shareholders, partnerships, etc. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, the bill provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations.

Part X backdates the effective date from 2001 to 2000 for enhanced low income housing tax credits for projects located in counties damaged by Hurricane Floyd.

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[1] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

ASSUMPTIONS AND METHODOLOGY:

PART II: DELAY 2001 TAX BREAKS

STANDARD DEDUCTION – MARRIAGE TAX PENALTY

The term "marriage penalty" refers to the income tax situation where married individuals filing jointly pay more in tax than if the two individuals were unmarried filing as single persons. For example, the North Carolina standard deduction for single filers is $3,000, but for married filing jointly the standard deduction is $5,000. The personal exemption also favors single filers. For single filers, the personal exemption is $2,500 until you get to a maximum Adjusted Gross Income (AGI) of $60,000 where it drops to $2,000. For married filing jointly, the personal exemption is $2,500 up to $100,000 AGI, then drops to $2,000. State tax brackets also favor single filers as shown below:

Single	0 to $12,750	$12,751 to $60,000	$60,000>
Married filing jointly	0 to $21,250	$21,251 to $100,000	$100,000>

The 2001 General Assembly reduced the marriage penalty by increasing the standard deduction for married filing jointly taxpayers from $5,000 to $6,000. The standard deduction was increased to $5,500 in tax year 2002 and then to $6,000 in tax year 2003. The FY 2001-02 reduction in General Fund revenue was projected to be $9.7 million due to estimated payments and withholding by 762,340 couples in the first half of tax year 2002. The estimated loss for the following fiscal years is shown below.

FY 2001-02	-$9.7 mil.
FY 2002-03	-$32.0 mil.
FY 2003-04	-$45.0 mil.
FY 2004-05	-$45.8 mil.
FY 2005-06	-$46.5 mil.

Section 2.1(a) delays the first $500 increase in the standard deduction to tax year 2003 and Section 2.1(b) delays the additional $500 standard deduction increase to 2004. Since the original fiscal estimate assumed income tax withholding in tax year 2002 (second half of FY 01-02 and first half of FY 02-03), a delay in the standard deduction increase will result in a General Fund revenue gain from increased tax liability on 2002 tax returns. However, not all of the $41.7 million shown in the first two years of the chart will be regained by the General Fund next fiscal year. The 2003 effective date for the standard deduction increase means married filing jointly taxpayers can change their income tax withholding in the first half of 2003 and reduce their tax payments by $9.8 million. The net gain from this delay from 2002 to 2003 is $31.9 million ($41.7 million minus $9.8 million). For the $6000 standard deduction delayed until 2004, the estimated revenue loss is $32.4 million in FY 2003-04. Since the original estimate for FY 2003-04 was $45 million, the General Fund will gain $12.6 million that year.

Note: All revenue estimates for the standard deductions were calculated using the North Carolina Individual Income Tax Model. This tax model was created by the Barents Group for the

Department of Revenue and the General Assembly for use in estimating tax law changes. The model bases future year estimates on data from 1998 North Carolina individual income tax returns.

INCREASE TAX CREDIT FOR CHILDREN

The current $60 child tax credit was approved by the 1995 General Assembly. The 2001 General Assembly increased the child credit from $60 to $75 per child in tax year 2002 and from $75 to $100 in tax year 2003. The first increase will reduce General Fund revenue $19.8 million in FY 2002-03 for taxpayers filing returns in the spring of 2003. The second year increase will boost the revenue loss to $54.8 million in FY 2003-04. This tax change will benefit 18,354 single tax filers, 496,286 married couples, and 411,648 heads of households in tax year 2002. This revenue estimate was calculated using the North Carolina Individual Income Tax Model.

Section 2.2(a) delays the first $15 increase in the tax credit from 2002 to 2003 and Section 2.2(b) delays the second $25 increase from 2003 to 2004. The delay will eliminate the $19.8 million General Fund loss for FY 2002-03 and result in a General Fund revenue gain of an equal amount. There is a revenue gain of $34.9 million in FY 2003-04 because the $75 credit in 2003 has a $19.9 million revenue loss versus the $54.8 million loss for the now scheduled $100 credit.

PART III: UPDATE IRC REFERENCE

CONFORMITY

Section 3.1 changes the state tax law reference to the Internal Revenue Code from January 1, 2001, to May 1, 2002. Since North Carolina individual and corporate income tax law tracks the federal income tax law, it is necessary each year to update state statutory references to the Internal Revenue Code (IRC). Congress enacted two major bills in calendar years 2001 and 2002 that have a negative revenue impact on the state General Fund.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) included numerous provisions that impact North Carolina individual and corporate income tax. This bill conforms the state to the education provisions in the bill that affect education IRAs, Qualified Tuition Plans, deduction for higher education expenses, interest from student loans, and employer provided assistance. The bill conforms to the pension provisions in the act that affect IRA contribution limits, deferred comp plan deferral limits, and plan portability. The bill accepts changes in the phase out of itemized deductions and personal exemptions beginning in 2006. However, the bill does not conform to the estate tax changes in the act.

The state will conform to the Job Creation and Worker Assistance Act of 2002 except for the accelerated depreciation rules. Included in the bill were changes to net operating losses, the extension of expiring tax provisions, and a new above the line $250 deduction for teachers' classroom expenses.

The estimate of the state's revenue gain or loss from the federal changes is based on the fiscal analysis of the Congressional Joint Committee on Taxation. The federal analysis includes the effects of certain behavioral responses to tax proposals, including shifts between nontaxable and taxable sources of income, changes in amounts of charitable giving, and changes in the timing of realization of some sources of income. To derive an estimate for North Carolina for individual income tax changes, the federal income tax receipts for the U.S. were compared to the North

Carolina General Fund income tax receipts for the July 2000 to July 1 2001 period (with adjustments for earmarks and refunds). The resulting percentage was .735%. For corporate income tax, a .59% rate was derived using the 1997 US Economic Census on Manufacturing.

The state revenue impact from conforming to the two federal bills is as follows:

Conformity	($million)				
Category	02-03	03-04	04-05	05-06	06-07
Economic Growth and Tax Relief Reconciliation Act of 2001					
Education	-14.6	-20.5	-25.3	-27.8	-15.8
Pensions, IRA's	-6.1	-14.3	-18.5	-24.7	-29.4
Other					-12.8
Job Creation and Worker Assistance Act of 2002					
Net operating losses	-4.7	-3.9	2.5	1.7	1.1
Other	8.5	13.2	-8.4	-26.1	-20.3
	-16.9	**-25.5**	**-49.7**	**-76.9**	**-77.3**

ACCELERATED DEPRECIATION

The first step in the analysis of Sections 3.2 and 3.3 was a simulation of the impact of the 30% bonus depreciation and the add-back on individual projects. A project size of $10 million was selected, although the analysis is the same regardless of the magnitude of the investment. Bonus depreciation is eligible for projects with a class life of up to 20 years. Thus, the following classes of asset lives would be impacted.

Class (Years)	Class Life Range (Years)
3	Less than 4
5	4-9
7	10-15
10	16-19
15	20-24
20	25 or more

The analysis assumed the use of the modified accelerated cost recovery system (MACRS). This system includes depreciation schedules based on double-declining balance depreciation rates for 3, 5, and 7-year property. For other classes, straight-line depreciation must be used. In addition, the analysis used the "mid-year convention" for the assumed investments.

The simulation looked at investments for all class lives eligible for bonus depreciation. Each calculation compared the current law depreciation with that under the 30% bonus. Under the 30% bonus schedule, the "regular depreciation" declines since it is calculated against the depreciation base after the application of bonus depreciation. Thus, the decline in normal depreciation offsets the first-year increase in total depreciation due to the bonus amount so that over the life of the asset there is no net change in the depreciation taken.

In addition, the impact of the 100% and 80% addbacks, and the "giveback" of the addback beginning in 2005, is calculated. The first-year net impact of bonus depreciation varies by asset class, with the largest short-term tax savings going to the assets with the longest lives. **The net impact of both the bonus depreciation and add-back are essentially zeroed out over the long term.**

To determine the impact on state revenues, a mathematical relationship was established between the net impact of "bonus depreciation with add-back" and "bonus depreciation only". This ratio was then compared to the "bonus depreciation only" fiscal impact of numerous states as reported in the National Conference of State Legislatures (NCSL) survey. These estimates were then adjusted to North Carolina based on corporate tax receipts in each state. In addition, the recent report of the Center for Budget and Policy Priorities (CBPP) contained estimates for particular states. The estimate used in this analysis relies heavily on the CBPP report.

In addition to the steps listed above, Fiscal Research also reviewed the fiscal impact statements in the three states that have adopted add-backs. The states are Nebraska (85% add back), Ohio (83.33%), and Minnesota (80%). This review, coupled with phone conversations with tax analysts in all three states, indicated that the add-backs used make the bonus depreciation approximately revenue-neutral for FY 2002-03. For future years, the net impact depends on the "add-back subtraction" schedule adopted.

The discussions with other states confirmed the difficulty of developing a precise fiscal estimate. The biggest problem is that after simulating the case-by-case impact of the proposal on investments with different class lives, there is no way to know how to weight the different simulations. The reason is that capital investment data compiled by the U.S. Department of Commerce does not provide a breakdown by asset life.

A particular problem encountered was the 2001 tax year. The federal change was effective for investments after September 10 of the year. Under current Department of Revenue instructions, calendar year taxpayers were able to use bonus depreciation for the 2001 tax year if they were able to modify their return in the few days between the federal enactment and the March 15 filing date. Other affected taxpayers will be eligible for a refund, but only after action by the General Assembly. These different possibilities make it difficult to determine how much of the 2001 tax year impact occurred in FY 2001-02 versus FY 2002-03.

The cash-flow estimates are conservative in terms of the weighting of asset classes in the calculations.

ESTATE PICK UP TAX

The regular inheritance tax was repealed in North Carolina by the 1998 General Assembly, effective for deaths occurring on or after January 1, 1999. Following the tradition of the other 36 states that have repealed their primary death tax, a "pickup" tax continues to be levied in North Carolina to use up the credit allowed on the federal estate tax return for state death taxes. In the absence of such a levy, the federal tax liability of the estate would be increased and potential state dollars would flow to the U.S. treasury.

In 2001 the congressional tax package made two changes that will have an effect on a small number of large estates as well as pickup tax collections in many states. First, the federal tax was phased out over a number of years until it is completely eliminated in 2010. This was accomplished primarily through higher federal credits. In the first few years, the higher credits reflect an acceleration of the credit phase-up under the 1997 federal tax relief bill. In addition, the 2001 bill phases out the state death tax credit over four years, beginning with deaths occurring on or after January 1, 2002.

The starting point for the analysis of Section 3.4 was the pickup tax revenue estimates included in the official revenue forecast used in amending the FY 2002-03 General Fund budget. The FY 2002-03 forecast of $117.3 million of pickup taxes was grown by 4% per year to determine receipts for future years (until the tax is effectively eliminated due to the repeal of the federal credit for state death taxes). Fiscal Research then reviewed the projected cost for each year of full conformity to the 2001 federal changes contained in the Center For Budget and Policy Priorities (CBPP) report. In addition, we looked at state by state estimates contained in the NSCL survey and adjusted these numbers to North Carolina by using state-specific federal estate tax return data for 1993-99 (reported gross estate numbers). The estimates finally adopted for purposes of this fiscal note were slightly higher than the CBPP numbers and near the top of the range of the estimates of other states.

This "full conformity" estimate was then modified to determine the "higher federal credits" conformity ("partial conformity") cost by comparing the CBPP estimates for full conformity and partial conformity for the 2002-03 fiscal year (18%). This led to an annualized FY 2002-03 projection of $7.3 million. For future years, the partial conformity estimate was based on the relationship of the CBPP projection of partial conformity for North Carolina to full conformity.

PART IV: UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV will reduce the General Fund share of the administrative costs of the Unauthorized Substance Tax Division of the Department of Revenue, which administers the excise tax on unauthorized substances. Seventy-five percent (75%) of the tax proceeds are distributed to the law enforcement agencies that conducted the investigations that led to the assessments, and twenty-five percent (25%) of the tax proceeds are credited to the General Fund. In some years, the amount credited to the General Fund has not covered the costs of the Unauthorized Substance Tax Division.

Local law enforcement agencies receive most of the proceeds from the 75% that is distributed to law enforcement agencies. Therefore, the proposal is that local entities bear their proportionate share of the costs of the Unauthorized Substance Tax Division. To accomplish this, seventy percent (70%) of the costs would be taken from local sales and use tax revenue, as this percentage of the Division's cost is considered to be for the benefit of the local entities. This change in cost assignment requires an amendment to G.S. 105-501. This proposal does not change the amounts that are distributed to local law enforcement agencies. It simply recognizes that the Unauthorized Substance Tax Division primarily benefits local entities and that local entities should therefore bear their share of the expense.

The amount of the costs to be taken from the local sales and use tax is 70% of the costs of the Division rather than 75% because a small part of the amount that is distributed to law enforcement agencies is distributed to State law enforcement agencies. By the Department's records, the amount

distributed to State law enforcement agencies is less than 5%. Using 70% instead of 75% therefore ensures that the costs borne by local entities are proportionate to the benefits they receive.

The General Fund will be reimbursed from local Sales and Use Tax funds transferred to a non-tax GF revenue account for 70% or $886,893 of the division's operating budget. Essentially, relieves the GF of a portion of the division's operating expense.

PART V: INSURANCE REGULATORY CHARGE

Part V of the bill sets the insurance regulatory charge at 6.5%. This is the same amount set in the previous year. This fee is assessed against the 1.9% premiums tax paid by insurers or against the presumed premiums tax that would be paid by HMOs and Article 65 companies (Blue Cross/Blue Shield) if taxed at 1.9%. The revenue is used to reimburse the General Fund for appropriations to the Department to pay expenses incurred in regulating the industry and other industries and to other departments as specified in G.S. 58-6-25(d).

The premiums tax collections for FY 2002-2003 are estimated to be $315.79 million. The HMOs and the Article 65 companies must pay a regulatory charge based on their presumed premiums tax at 1.9% (they pay .833% in 2002 and 1% in 2003). The presumed premium tax for the HMOs and Article 65 companies is estimated to be $68.83 million.

With the premiums tax collections of $315.79 million and the presumed premiums tax of $68.83 million from the HMOs and Article 65 companies, the total base against which the insurance regulatory charge will be assessed is estimated to be $384.62 million. Applying the 6.5% regulatory fee to the $384.62 million base would generate $25 million in regulatory fee revenue.

The certified budget for the Department, based on actions taken during the 2001 Session, is $23.5 million. In addition to reimbursing the General Fund for appropriations to the Department, the Insurance Regulatory Fund will also reimburse the General Fund for the $486,000 appropriated to support the Managed Care Patient Assistance Program (MCPAP), established by S.L. 2001-446. The total reimbursement to the General Fund is estimated to be $24 million. The Department estimates that the reserve will have a balance of $11.98 million at the beginning of FY 2002-2003. The total available from the reserve fund of $11.98 million and the estimated collections of $25 million will be $36.98 million. The total available less the estimated General Fund reimbursement of $24 million will leave a year-end reserve balance of $12.98 million. This reserve is above one-third of the estimated General Fund reimbursement.

The above calculation is based on the certified budget for FY 2002-2003 and does not include any adjustments to the FY 2002-2003 Budget that are or will be under consideration during the 2002 Session. Based on the above, the regulatory surcharge rate of 6.5% is sufficient to defray the estimated cost of the operations of the Department and provide for a reserve fund. The Department recommends that the rate remain the same and would not recommend a decrease in the rate because of the unknowns in the economy.

PART VI: REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the fees for regulation by the North Carolina Utilities Commission ("Commission"). Section 6(a) of the bill sets the rate at 0.1%, the same as the current rate. Revenue from this fee, which is assessed against regulated public utilities, is used to support the operations of both the Commission and the Public Staff. Based on estimated FY 2002-03 jurisdictional revenues of $10,854,768,332, the regulatory fee will produce $11,700,238. For the same period, the Commission estimates that the combined operations of the Commission and Public Staff will require total expenditures of not less than $11,695,970. The net change in the Commission's Accumulated Fee Margin Reserve Account is therefore approximately $4,268. The estimated balance in this account as of June 30, 2003, is $4,941,393. This represents approximately five months of operating reserve.

Section 6(b) of the bill sets the public utility regulatory fee to be paid by the North Carolina Electric Membership Corporation for the 2002-03 fiscal year at $200,000. In 1999 the initial fee of $200,000 was developed as a result of discussions between the industry and the Utilities Commission, based on what the Utilities Commission believed to be the cost associated with regulating the electric membership cooperatives. In 2001 the Utilities Commission provided information to Fiscal Research illustrating that these fees will support approximately 4000 hours of accounting, engineering, and legal time. This fee amount must be set by the General Assembly each year.

PART VIII: SECURE LOCAL REVENUES

In the spring of 2001, as a result of substantial budget shortfall, the governor escrowed $95.0 million of reimbursement payments to local governments. This payment is made as a reimbursement for revenues lost by the state's repeal of the property tax on various inventories. The funds were placed in an escrow account in case they were needed to balance the state budget on June 30, 2001. These funds were later released to the local units. In 2002, again facing a difficult fiscal situation, Governor Easley escrowed the spring inventory tax reimbursement to local governments. This $95.0 million was again placed in a special account to hold in case it was needed to balance the state budget in 2002. At the same time the governor announced he was holding an additional $114.0 million in reimbursements and shared revenues to secure his ability to balance the state budget. The $114 million included the following estimated amounts:

Fund Type	*Amount Withheld*
Franchise Utility Tax	
March Distribution	35.6
June Distribution	25.0
Piped Natural Gas	

March Distribution	6.9
June Distribution	11.8
Beer and Wine Tax	26.8
Homestead Exemption	7.9
TOTAL	**114.0**

Sections 8.1 – 8.7 are an attempt to secure these revenues from future gubernatorial action. This legislation has no direct impact on the budgets passed by the General Assembly, as these shared revenues have not been used in the legislative process for state expenditures. However, the legislation could limit the options available to the Governor. Because of the lack of clarity about what actions will be required of the Governor in future years, and the impact this particular legislation will have on the individual's decisions, no fiscal estimate is possible on the impact of the legislation.

Part IX: CLOSE CORPORATE TAX LOOPHOLES

BUSINESS INCOME

The Tax Research Division of the Department of Revenue analyzed 1999 corporate income tax returns and found that the maximum amount of additional tax revenue from the proposal would be $293.4 million. For 2000, the maximum would be $442.5 million. The higher number for 2000 is due to an increase in the amount of nonbusiness income from all sources shown on 2000 returns and a higher weighted average apportionment factor.

The extent to which total reported nonbusiness income can be brought into the tax base depends on how much of this income is not reported to other states and whether there are certain types of nonbusiness income that could not be taxed under the federal standards in the bill. The Department of Revenue does not have a good feel for the magnitude of these factors. In addition, the impact of the 2001 recession has reduced the corporate tax base in North Carolina by 33% and economists are still cautious about the outlook for 2002 national corporate profits.

We have not found any situations in which states have recently adopted this legislation and thus had fiscal notes available. Many states have had such laws on the books for many years and a 1992 U.S. Supreme Court decision opened the door for states to pursue enforcement. New Jersey adopted the proposal this year but the quality of the fiscal information was lacking, partly due to the difficulty of making the estimate.

Based on discussions with the Department of Revenue and concern about the uncertainty surrounding the estimates, we have taken a very cautious approach to this estimate.

THROWOUT RULE

There is very little data from other states on this issue. The New Jersey corporation business tax reform package included the item but there was no statement of the methodology behind the fiscal estimate. We are concerned with the lack of quality data on the issue and feel that a conservative estimate equal to roughly 50% of the earlier proposed throwback rule would be workable. In our analysis, we consulted with the corporate staff of the Department of Revenue.

LLC FRANCHISE TAX

There is little available information on this matter. The fiscal estimate used for the 2001 proposal to address the issue was $10.8 million. Discussions with the Department of Revenue about the impact on some taxpayers indicated that the proposal would not only close some of the loophole not addressed last year but would also pick up some of the erosion in the corporate income tax due to the tax planning strategies that have taken place since the 2001 change or might occur in the future. Thus, the proposed change is broader than last year's action.

Part X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

The North Carolina Housing Finance Agency identified 8 projects authorized for a 25% state tax credit in 2000 that would qualify for the 75% state tax credit for those in counties damaged by Hurricane Floyd. These projects have been completed or are nearing completion thus the investors in the projects can begin taking the tax credit in FY 2002-03. Assuming the project investors use 100% of the available tax credit, the additional tax credits granted by this part is $10,727,800. Since the state tax credit is taken over five years, the General Fund revenue loss is spread over five fiscal years. The annual General Fund loss due to Part X of the bill is $2.15 million for Fiscal Years 2002-03 to 2006-07.

Projects	County	Federal Tax Credit	State Tax Credit @ 25%	State Tax Credit @ 75%	Additional Credit	2000 Tiers
#1	Craven	$2,648,010	$662,003	$1,986,008	$1,324,005	4
#2	Lenoir	$3,257,450	$814,363	$2,443,088	$1,628,725	3
#3	Lenoir	$2,530,000	$632,500	$1,897,500	$1,265,000	3
#4	Nash	$2,602,800	$650,700	$1,952,100	$1,301,400	4
#5	Pitt	$2,520,980	$630,245	$1,890,735	$1,260,490	4
#6	Pitt	$2,647,460	$661,865	$1,985,595	$1,323,730	4
#7	Wayne	$2,584,270	$646,068	$1,938,203	$1,292,135	3
#8	Wilson	$2,664,630	$666,158	$1,998,473	$1,332,315	3
			$5,363,900	$16,091,700	$10,727,800	

SOURCES OF DATA: Part II: Individual Income Tax Model. Part III: (1) The May, 2002 state-by-state survey of the National Conference of State Legislatures (**Recent Federal Tax Legislation and the States**); (2) A January, 2002 analysis of the Center On Budget and Policy Priorities on state options to conform to the 2001 federal estate tax changes; (3) Bonus depreciation fiscal estimate material from Ohio, Minnesota, and Nebraska; (4) Congressional Joint Committee on Taxation. Part VIII: Office of State Budget and Management. Part X: NC Housing Finance Agency

TECHNICAL CONSIDERATIONS: The January 1, 2002, effective date of the federal changes in Part III means that only three quarters of the 2002-03 fiscal year will be affected by the change since estates have up to nine months after death to file a return. In addition, the January 1, 2005, repeal of the state death tax credit on federal estate tax returns means that one quarter of FY 2005-06 revenues will be affected.

In Part IX of the bill, the 2002-03 estimate for the nonbusiness income change assumes that during the fiscal year the State would receive 100% of the 2002 tax year impact and about 40% of the 2003 tax year. For the other corporate changes, we did not assume that April and June, 2003 estimated tax payments would be adjusted up because the magnitude of the calendar year change is relatively small.

Minutes
House Committee on Finance

July 17, 2002

Continuing from its earlier meeting on this day, the House Committee on Finance met on Wednesday, July 17, 2002, at 12:00 P.M., in Room 643 of the Legislative Office Building.

Rep. Gordon Allen, presiding Chair, called the meeting to order. The following members were present: Chairmen Buchanan, Luebke, and Wainwright; Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Cunningham, and Earle. Staff in attendance included Cindy Avrette, Trina Griffin, Mary Shuping, Martha Walston, Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, and Martha Harris.

Chairman Allen recognized and thanked pages Raymond Chin from Orange County, Matt Goodwin from Gaston County, Daniel Hurley (grandson of Representative Hurley from Fayetteville), and Kevin Kelly and Chris Carlton from Wake County.

Chairman Allen announced that HB 1720, Wilmington Occupancy Tax, was being referred to the Finance Subcommittee on Occupancy, chaired by Representative Jarrell.

Chairman Allen then opened the meeting to hear from the general public who were in attendance. He recognized several people who spoke on the importance of continuing in the budget the CAP and other programs for the disabled.

To continue the morning's discussion of the Proposed Committee Substitute for Senate Bill 1292, Chairman Allen recognized Representative Pope who offered an amendment that would delete "A percentage" and substitute "Eighty-five percent (85%) on pages 2, line 35 and 3, line 13, and to make other changes (Amendment No. 1). Rep. Pope noted that along with copies of his amendment, copies of a memo from Dave Crotts, Fiscal Research Division, and an email from Canaan Huie, Bill Drafting, were being distributed to the members. He moved for its adoption. Following discussion, the amendment was defeated by Roll Call Vote.

Rep. McMahan offered an amendment to the PCS on page 2, lines 35-40, and page 3, lines 13 to 18, by rewriting those paragraphs (excluding the number) to read: "The amount allowed in the taxpayer's 2002 taxable year as a thirty percent (30%) accelerated depreciation deduction under Section 168(k) or Section 1400L of

the Code;" and on page 3, line 37, and page 4, line 3, by deleting the phrase "2005" on each line and substituting the phrase "2003" (Amendment No. 2). Following discussion, Rep. McMahan said the amendment as drawn up was not what he had intended. He then withdrew the amendment and requested that staff draw up another amendment that "would simply say that in lieu of delaying this 30% bonus to 2005, it would be moved back to 2003."

Rep. Pope then offered an amendment to make certain technical changes to the PCS, including adding to the title, on page 1, line 6, the following phrase after the semi-colon: "TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES" (Amendment No. 3). Rep. Pope said he was introducing this amendment at the request of the North Carolina Bar Association and moved for its adoption. The amendment was adopted.

Chairman Allen announced that the Committee would recess for a half hour to give the staff time to draw up the amendment requested by Rep. McMahan.

Following the recess, Rep. McMahan withdrew his request for the amendment.

Upon motion of Rep. Buchanan, the House Committee substitute for SB 1292 was given a favorable report, which changes the title, unfavorable as to Senate Committee Substitute Bill. The motion passed by Roll Call Vote. Copies of the Committee Report, PCS, amendments, Original Bill, Summary and Bill Analysis are attached as part of these minutes.

There being no further business, Chairman Allen adjourned the meeting at 1:50 P.M.

Respectfully submitted,

Representative Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

PCS for SB 1292
Committee Reports
Visitor Registration Sheet

AGENDA

House Finance Committee

July 17, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1292 BUDGET REVENUE ACT OF 2002

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance — 7/17/02

Name of Committee — Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Greg Radford	NC DOR
Eddie Finch	NC Dor
Lonnie Collins	NC DOR
[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	OSC
[illegible]	Gov Off
[illegible]	DOA
Carol Lawler	EGLS
[illegible]	NC Ret Govt Emp Assn
[illegible]	N.C. Ret Sch Personnel
Leon M Killian	Moore + Van Allen
Meg Imgeward	Covenant w/ NC's children
Paula Wolf	Covenant w/ NC's children
Tommy [illegible]	NCADA
Wm W Nelson	NC Bar Association
Michelle Frazier	NC Bar Ass'n
GENE AINSWORTH	RJ REYNOLDS
Bob Lenert	HHS
Amy Gardner	N+O
Ray Presnell, Jr.	NC Retired School Personnell
Phil Kirk	NCCBI
Leslie Bybee Gunn	NCCBI
Susan Pierce, RN	UNC - Chapel Hill
Joanne Schoen Stevens	nursing
Rob Schofield	NC Justice Center
Ken Carlson	NCBTC
Elaine Mujica	NC BTC

VISITOR REGISTRATION SHEET

House Finance Committee
Name of Committee

7/17/2002
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Margaret Westbrook	KCLH
Ron Ottavio	Wachovia
Lewis G. Leonard	NCDOL
Hal Miller	NCAECT
Fred Allen	NC Aggregates Assn.
Theresa Kosteg	CAA
Dean Plunkett	NC Beer & Wine
John Palisano	AT&T
Phil Kirk	NCCBI
Roshi Bubega	NCCBI
Kim Cashion	NC BTC

VISITOR REGISTRATION SHEET

House Finance Committee — 7/17/2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elaine Mejia	NC BTC
John Long	Martin Marietta
Ed Turlington	Brooks Pierce
Roz Sawicki	NCCA
Mary Carmichael	REBIC
Tim Minton	NC Home Builders
Katherine Miller	NC. Assoc. of School Admin.
Diana Williams	Glaser & Assoc.
Gary Salamido	GSK
Jon Carr	Jordan Price
Paul Meyer	Hickory City
Sam Johnson	Atty

VISITOR REGISTRATION SHEET

House Finance Committee — 7/17/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Francis	Mecklenburg County
Natalie English	Charlotte Chamber
Nic Heinke	NCEITA
Guy Rowland	Allgood & Co.
[signature]	Moore & Van Allen
Audrey R. Galloway	NCAE
Mary J. Freeman	NCAE
Angie McMillan	TNC
Barbara Canada	MFGS
Amy Jo Horne	NC Medical Society
Stacy Flannery	NCHCFA

VISITOR REGISTRATION SHEET

House Finance Committee — 7/17/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	BSC
Joyce Peters	JP Assoc / Electri Cities
Alice Garland	EC
Sandra Long	Martin Marietta
Micky Musc	Eckerd Ct.
D. Duck	DL
THOMAS A. SUTER	WYETH
Ruth Sappie	NCDOT - Fiscal
	Bowe & Assoc -
Pam Morgan	NFIB

VISITOR REGISTRATION SHEET

House Finance Committee — 7/17/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Neil Jonas	North Carolina Political Review (www.ncpoliticalreview.com)
Aaron McKethan	"
Fran Preston	NCRMA
Henry Jones	Attorney - Raleigh
John Bowdish	Alley Associates
Katherine Davis	EDS
Lori A Harris	Harris & Assoc
DJ Den	BellSouth
Elizabeth Dalton	Bone & Associates
Robert Wilson	S.O.S
Jim Thornton	Sawsson

VISITOR REGISTRATION SHEET

House Finance Committee — 7/17/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Mitchell	Novartis
Ken Howell	Governor's Office
	Governor's Office
Jennifer Allen	NAMS
Preston Howard	MCIC
Sara Rains	Rep. Luebke
Mary Katherine Hackney	Rep. Hackney
Andrea Schrag	Rep. Alexander
Claire Flye	Mast Drug
HASKELL RHETT	NC STATE PORTS AUTHORITY

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1292 A BILL TO BE ENTITLED AN ACT TO RAISE REVENUES TO SUPPORT THE CURRENT OPERATIONS OF STATE AND LOCAL GOVERNMENT, TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS, AND TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1292

Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-PCS4735-LYxf-44

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING

IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. RESERVED

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001,~~May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) A percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. For amounts allowed for taxable years beginning before January 1, 2004, the percentage is one hundred percent (100%). For amounts allowed for taxable years beginning on or after January 1, 2004, the percentage is eighty percent (80%).

In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section

1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year.

These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) A percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. For amounts allowed for taxable years beginning before January 1, 2004, the percentage is one hundred percent (100%). For amounts allowed for taxable years beginning on or after January 1, 2004, the percentage is eighty percent (80%).

In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year.

These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

SECTION 3.7.(a) G.S. 105-188(d) reads as rewritten:

"(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the

gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable."

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of

Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy

of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

PART IX. CLOSE CORPORATE TAX LOOPHOLES

SECTION 9.1.(a) G.S. 105-130.4(a)(1) reads as rewritten:

"(1) "Business income" means ~~income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.~~ all income that is apportionable under the United States Constitution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) The sales factor is a ~~fraction, the~~fraction. The numerator of ~~which~~ the fraction is the total sales of the corporation in this State during the income ~~year, and the~~year other than sales to the United States government. The denominator of ~~which is the total sales of the corporation everywhere during the income year.~~ the fraction is the total sales of the corporation everywhere during the income year except for (i) sales to the United States government, (ii) sales that are in a state in which the taxpayer is not taxable, and (iii) sales that are in a foreign country when that country does not subject the taxpayer to a tax on or measured by profits or income. Notwithstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies.

It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i)~~ aA percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal

corporation that are corporations. ~~under the limited liability company's governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

Bill Adopted

(Revised 6-02)

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# 1292

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander	✓		Wainwright	✓	
Allen	✓		Weiss	✓	
Blust		✓	Willingham	✓	
Buchanan	✓		Wilson		
Capps		✓	Womble	✓	
Cox	✓				
Decker		✓			
Dedmon	✓				
Eddins		✓			
Edwards	✓				
Gibson	✓				
Gray		✓			
Hackney (Speaker Pro Tem)	✓				
Hill	✓				
Holliman	✓				
Hurley	✓				
Jarrell	✓				
Johnson		✓			
Luebke	✓				
McComas		✓			
McCombs		✓			
McMahan		✓	Ex officio Members		
Morris		✓	Majority Leader Baddour	✓	
Pope		✓	Majority Whip Earle	✓	
Rayfield		✓	Majority Whip Cunningham	✓	
Starnes		✓			
				20	13

Amendment #1 defeated

(Revised 6-02)

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# 1292

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
ALEXANDER		✓	WAINWRIGHT		✓
ALLEN		✓	WEISS		✓
BLUST	✓		WILLINGHAM		✓
BUCHANAN	✓		WILSON	✓	
CAPPS	✓		WOMBLE		✓
COX		✓			
DECKER	✓				
DEDMON		✓			
EDDINS	✓				
EDWARDS		✓			
GIBSON		✓			
GRAY	✓				
HACKNEY		✓			
HILL		✓			
HOLLIMAN	✓				
HURLEY		✓			
JARRELL		✓			
JOHNSON	✓				
LUEBKE		✓			
MCCOMAS	✓				
MCCOMBS	✓				
MCMAHAN	✓		Ex officio Members		
MORRIS	✓		Majority Leader Baddour		✓
POPE	✓		Majority Whip Earle		✓
RAYFIELD	✓		Majority Whip Cunningham		✓
STARNES	✓				
				16	18

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 7

H. B. No. _____ DATE 7-17-02

S. B. No. 1292 Amendment No. 1 (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Sen.) Pope

1 moves to amend the bill on page 2, line 35

2 ( ) WHICH CHANGES THE TITLE

3 by and page 3, line 13,

4 by deleting "A percentage" on each line and

5 substituting "Eighty-five percent (85%)";

6 and on page 2, lines 37-40, and page 3, lines 15-18,

7 by rewriting each set of lines to read: "1400L of the Code,";

8 and on page 3, line 3, and line 25,

9 by deleting the phrase "to the" on each line and substituting

10 "to eighty-five percent (85%) of the".

11

12

13

14

15

16

17

18

19

SIGNED Rep. Pope

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7-17-02

S. B. No. 1292 PCS Amendment No. 2 (withdrawn)
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) McMahan
Sen.)

1 moves to amend the bill on page 2, lines 35-40
2 ( ) WHICH CHANGES THE TITLE
3 ~~by~~ and page 3, lines 13-18, by rewriting those paragraphs
4 (excluding the number) to read:
5 "The amount allowed in ~~a taxable~~ the taxpayer's
6 2002 taxable year as a thirty percent (30%) accelerated
7 depreciation deduction under section 168(k) or section 14002
8 of the Code.";

10 and on page 3, line 37, and page 4, line 3,
11 by deleting the phrase "2005," on each line
12 and substituting the phrase "2003"

SIGNED Ed McMahan

ADOPTED _____ FAILED _____ TABLED _____

Withdrawn

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Adopted

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1292-ALC-161 [v.5]

Date 7-17-02 ,2002

Comm. Sub. [YES]
Amends Title [YES]
PCS4730-LYxf-37

Representative Pope

moves to amend the bill on page 1, line 6, by adding the following after the semi-colon: "TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES;";

and on page 4, line 35,
by adding the following on the line:

"**SECTION 3.7.(a)** G.S. 105-188(d) reads as rewritten:

'(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

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

S1292-ALC-161 [v.5]

extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable.'

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

SIGNED Rep. Art Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 1292
Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO RAISE REVENUES TO SUPPORT THE CURRENT OPERATIONS OF STATE AND LOCAL GOVERNMENT, TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS, AND TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE LOCAL OPTION SALES TAX

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~August 1, 2002."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~'in addition to all current State and local sales and use taxes.' "

SECTION 1.3.(a) Effective July 1, 2002, G.S. 105-520 reads as rewritten:

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the

Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month.~~quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each ~~month~~ quarter between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a ~~month~~ quarter if it is not entitled to a distribution under G.S. 105-501 for the same ~~month.~~quarter."

SECTION 1.3.(b) This section is repealed effective July 1, 2003.

SECTION 1.4.(a) G.S. 105-521 reads as rewritten:

"**§ 105-521. Transitional local government hold harmless.**

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

(1) Local government. – A county or municipality that received a distribution of local sales taxes in the most recent fiscal year for which a local sales tax share has been calculated.

(2) Local sales tax share. – A local government's percentage share of the two-cent (2¢) sales taxes distributed during the most recent fiscal year for which data are available.

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections.

(4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax authorized in Article 39 of this Chapter and in Chapter 1096 of the 1967 Session Laws, the first one-half cent (½¢) local sales and use tax authorized in Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax authorized in Article 42 of this Chapter.

(b) ~~Distributions.~~ 2002-2003 Distribution. – On or before September 15, 2002, the Secretary must multiply each local government's local sales tax share by the sum of three hundred nine million ten thousand six hundred sixty-seven dollars ($309,010,667). If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(c) Subsequent Distributions. – On or before September 15, 2003, and each September 15 thereafter, the Secretary must multiply each local government's local sales tax share by the estimated amount that all local governments would be expected to

receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter, the Office of State Budget and Management and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections.

~~(c)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this section from sales and use tax collections under Article 5 of this Chapter.

~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee by January 31, ~~2004~~,2003, and each January 31 thereafter, the amount distributed under this section for the current fiscal year."

SECTION 1.4.(b) G.S. 105-521 is repealed effective July 1, 2012.

SECTION 1.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities shall be the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary shall then distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 1.6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~ August 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective August 1, 2002, the county must notify the Secretary on or before July 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days' advance notice of the tax levy.

For taxes ~~levied on or~~ that are to become effective after January 1, ~~2004,~~ 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~ 2002."

SECTION 1.9. Notwithstanding any other provision of law, for the months of August and September 2002, the administration and distribution of taxes collected under Article 44 of Chapter 105 of the General Statutes shall be in accordance with this section. For each of those months, the Secretary of Revenue shall create a separate account for the collection of taxes under Article 44 of Chapter 105 of the General Statutes. In each of those months, retailers shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a form separate from that on which the retailer reports other sales and use taxes collected. In each of those months, the Secretary shall allocate to each county that has imposed a tax under Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax collected under that Article. A county's allocation shall be determined by multiplying the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes for that month by a fraction. The numerator of the fraction is the amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to the county. The denominator of the fraction is the total amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to all counties that have imposed a tax under Article 44 of Chapter 105 of the General

Statutes. The Secretary shall distribute these taxes at the end of the quarter in accordance with G.S. 105-520(c).

SECTION 1.10. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to three hundred thousand dollars ($300,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.12.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article shall be known as the '~~Local~~ First One-Cent (1¢) Local Government Sales and Use Tax ~~Act.~~'Act."

SECTION 1.13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article shall be known as the ~~Additional Supplemental~~Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes without giving at least 10 days' public notice of its intent to adopt the resolution and without holding a public hearing on the issue of adopting the resolution.

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001~~,May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. This adjustment does not result in a difference in basis of the affected assets for State and federal income tax purposes."

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If

any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective July 1, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. VARIOUS FEES

SECTION 7.1.(a) G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows ~~him~~ the person additional time to pay the fee. The parolee may not be required to pay the fee before ~~he~~ the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that ~~he~~ the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this ~~section~~ subsection may be paid as prescribed by the supervising parole officer."

SECTION 7.1.(b) G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

SECTION 7.1.(c) G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) shall be paid by all persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which ~~he~~ the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within

two weeks from the date the person is ordered to perform the community service, and before ~~he begins his~~ the person may participate in the community ~~service,~~ service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before ~~he~~ the person pays the fee by the court in which ~~he~~ the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin ~~his~~ community service before the fee is paid by the official or agency representing the State in the agreement.

~~Fees collected pursuant to this subsection shall be deposited in the General Fund.~~"

SECTION 7.1.(d) This section becomes effective October 1, 2002, and applies to fees assessed or collected on or after that date.

SECTION 7.2.(a) G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 7.2.(b) G.S. 15A-1368.4(f) reads as rewritten:

"(f) Required Supervision Fee. – The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

SECTION 7.2.(c) G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

SECTION 7.2.(d) This section becomes effective October 1, 2002, and applies to supervision fees assessed or collected on or after that date.

SECTION 7.3.(a) Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-38.7. Dispute resolution fee for cases resolved in mediation.**

(a) In each criminal case filed in the General Court of Justice that is resolved through referral to a community mediation center, a dispute resolution fee shall be assessed in the same amount as the General Court of Justice fee imposed under G.S. 7A-304(a)(4) for cases in the district court. Fees assessed under this section shall be paid to the clerk of superior court in the county where the case was filed and remitted by the clerk to the State Treasurer.

(b) Each criminal case filed in the General Court of Justice and resolved through referral to a community mediation center shall include, as a part of the resolution, an agreement on which of the parties shall be responsible for the payment of the dispute resolution fee assessed under this section. Before providing the parties with a signed copy of the mediation agreement, the community mediation center shall require proof that the dispute resolution fee has been paid as required by subsection (a) of this section."

SECTION 7.3.(b) Each community mediation center shall maintain records as to the number of cases in which dispute resolution fees are assessed and paid. The Mediation Network of North Carolina shall collect this information from each center annually.

Each community mediation center shall also maintain records as to the source of referral for all court-referred cases. Each center receiving State funds shall use a standardized form and methodology to determine the referral source and report that information annually to the Mediation Network of North Carolina.

The Mediation Network shall report by March 15, 2003, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on the fees collected year-to-date and the sources of referral of court-referred cases during the 2002-2003 fiscal year.

SECTION 7.3.(c) This section becomes effective October 1, 2002, and applies to cases resolved on or after that date.

SECTION 7.4.(a) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. ~~A person found responsible for a violation of this section may not be assessed court costs.~~"

SECTION 7.4.(b) This section becomes effective October 1, 2002, and applies to costs assessed or collected on or after that date.

SECTION 7.5.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed

against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~sixty-five dollars ($65.00)~~ seventy-five dollars ($75.00) in the district court, including cases before a magistrate, and the sum of ~~seventy-two dollars ($72.00)~~ eighty-two dollars ($82.00) in the superior court, to be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...."

SECTION 7.5.(b) This section becomes effective October 1, 2002, and applies to costs assessed or collected on or after that date.

SECTION 7.6.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The cost of expunging such records shall be taxed against the petitioner.~~"

SECTION 7.6.(b) G.S. 15A-145 is amended by adding a new subsection to read:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(c) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The costs of expunging such records shall be taxed against the petitioner.~~"

SECTION 7.6.(d) G.S. 15A-146 is amended by adding a new subsection to read:

"(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(e) G.S. 90-96 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 7.6.(f) This section becomes effective October 1, 2002, and applies to petitions filed on or after that date.

SECTION 7.7.(a) G.S. 130A-5 is amended by adding the following new subdivision to read:

"(15) To establish a fee to cover the cost of analyzing clinical Pap smear specimens sent to the State Laboratory by local health departments and State-owned facilities and for reporting the results of the analysis. This fee shall be in addition to the charge for the Pap smear test kit."

SECTION 7.7.(b) This section is effective when it becomes law.

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

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

section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under

this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the North Carolina Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 8.7. The provisions of this Part are severable. If any provision of this Part is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the Part that can be given effect without the invalid provision.

PART IX. EFFECTIVE DATE

SECTION 9. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

Senate Bill 1292 (HPCS): Budget Revenue Act of 2002

BILL ANALYSIS

Committee: House Finance
Date: July 3, 2002
Version: House PCS

Introduced by: Senators Kerr and Hoyle
Summary by: Finance Team

SUMMARY: The proposed House Committee Substitute for Senate Bill 1292 contains the following tax changes:

- *PART I – Reserved.*
- *PART II delays the income tax breaks enacted in 2001. This Part is identical to the Senate version.*
  - *The phase-in of the increase in the standard deduction for married filing jointly is delayed until January 1, 2003.*
  - *The phase-in of the additional child tax credit amount is delayed until January 1, 2003.*
- *PART III conforms North Carolina's tax laws to many of the federal tax law changes enacted in 2001 and 2002. Except for a reduction in the bonus depreciation add-back, this Part is identical to the Senate version.*
  - *Conform to the educational provisions in EGTRRA.*
  - *Conform to the pension tax provisions in EGTRRA.*
  - *Conform to the net operating loss provisions in EGTRRA.*
  - *Conform to the miscellaneous provisions in EGTRRA and in the Economic Stimulus Bill.*
  - *Conform to the increased estate tax limits in EGTRRA.*
  - *The bill does NOT conform to either the phase-out of the State estate death tax credit in EGTRRA or the accelerated depreciation provisions in the Economic Stimulus Bill.*
- *PART IV provides that local governments will bear a portion of the costs associated with the collection of the drug tax. These costs are currently borne entirely by the General Fund. Except for a correction to the effective date, this Part is identical to the Senate version.*
- *PART V sets the insurance regulatory fee at 6.5% for the 2002 calendar year. This rate is the same as the 2001 rate. This Part is identical to the Senate version.*
- *PART VI sets the public utility regulatory fee at 0.1% for the 2002-2003 fiscal year. It also sets the electric membership corporation regulatory fee at $200,000 for the 2002-03 fiscal year. These rates are the same as the rates established last year.*
- *PART VII is reserved.*

- ***PART VIII seeks to secure local revenues in two ways, listed below. This Part is identical to House Bill 1490 as it passed the House. It is similar to the corresponding provision in the Senate version.***[1]
  - ***It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.***
  - ***It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized by an act of the General Assembly.***
- ***PART IX closes three corporate tax loopholes, as described below. There is no corresponding provision in the Senate version.***
  - ***Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective beginning with the 2002 tax year.***
  - ***Provides that sales that no state has the right to tax are "thrown out" of the calculation of profits to apportioned among the states, thereby increasing the percentage apportioned to North Carolina for the purpose of corporate income taxation, effective beginning with the 2002 tax year.***
  - ***Tightens the 2001 legislation that was intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company, effective beginning with payments due in March 2003.***
- ***PART X enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. There is no corresponding provision in the Senate version.***

PART I: [RESERVED]

PART II: DELAY 2001 TAX BREAKS

Last session, the General Assembly enacted two income tax breaks to become effective for 2002 tax year[2]: elimination of the marriage tax penalty[3] and an increased tax credit for children. Part II of this bill delays the enactment of these tax benefits.

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[1] The Senate version lacks the conforming change to the electric cities statute, and lacks the extra requirement that the Governor needs General Assembly authorization before releasing any funds committed to local governments.
[2] S.L. 2001-424, as amended by S.L. 2001-476, 2001-497, and 2001-489.
[3] The so-called married tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry,

Last session, the General Assembly reduced North Carolina income taxes on married couples that claim the standard deduction[4] by increasing the amount of the standard deduction for married filers so that it would be twice that of a single taxpayer. Since 1989, the basic standard deduction for a single person in North Carolina has been $3,000 while that for a married couple filing jointly has been $5,000. The increase in the deduction enacted in 2001 is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so the 2001 act also phased it up from $2,500 to $3,000 over the 2002 and 2003 tax years. Part II of this bill would delay by one year the phase-in of the increased deduction, so that it would occur over the 2003 and 2004 tax years.

In 2001, the General Assembly increased the $60 tax credit per child to $75 for the 2002 tax year and to $100 for the 2003 tax year. Part II of this bill would delay the phase-in of the credit increase until the 2003 and 2004 tax years. The 1995 General Assembly enacted the tax credit of $60 per child for taxpayers who have dependent children and have family adjusted gross income below $100,000 for a married couple and $80,000 for a head of household. Neither the 2001 act nor this bill changes the income thresholds. The credit is in addition to the federal and state tax credits or exclusions for child care expenses. The credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

PART III: UPDATE IRC REFERENCE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[5] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[6] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

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a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[4] Roughly 70% of North Carolina taxpayers claim the standard deduction.

[5] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[6] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

Congress enacted two bills that have changed the Code significantly since January 1, 2001:

- The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), enacted on June 7, 2001, includes numerous changes to the taxation of pension benefits, accounts, distributions, and rollovers; of education initiatives; and of estates. All of the provisions of EGTRRA will expire on December 31, 2010, unless the provisions are renewed or modified by Congressional action.[7]
- The federal Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004, and an extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002 from two years to five years.

Both of these acts will substantially affect a taxpayer's federal taxable income. Since North Carolina begins its corporate and individual income tax calculations with federal taxable income, these acts also have a substantial impact on North Carolina's tax revenues to the extent the State chooses to conform to those changes.

Part III of this bill rewrites the definition of the Code to change the reference date from January 1, 2001, to May 1, 2002. It then provides that a taxpayer must add to federal taxable income the amount allowed as an accelerated depreciation deduction under section 168(k) or 1400L of the Code and that a taxpayer's estate tax liability is determined without regard to the phase-out of the state death tax credit. In effect, Part III would do the following:

- Conform to all of the pension tax changes in the Code.
- Conform to all of the education initiatives in the Code.
- Conform to the increased estate tax exemption limitations.
- Not conform to the phase-out of the state death tax credit.
- Conform to the extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002.
- Delay the accelerated 30% bonus depreciation allowance.

Pension Tax Provisions: This Part conforms North Carolina's tax treatment of pension benefits and distributions to federal law. Some of the more notable changes EGTRRA made to the pension laws include:

- It allows taxpayers to contribute more to their tax-deferred retirement accounts. It gradually increases the amount that may be contributed to a 401(k), 403(b), and 457 accounts between 2002 and 2006. The contribution limit will increase to $15,000 in 2006. Starting in 2007, the limit will be indexed for inflation in $500 increments. It also allows persons who are 50 or older to make an additional catch-up contribution to their tax-deferred retirement accounts.
- It increases the amounts that may be contributed to both traditional IRAs and Roth IRAs from $2,000 in 2001 to $3,000 in 2002. This amount gradually increases to $5,000 for 2008. After 2008, this amount will be indexed annually for inflation. It also allows people over the age of 50 to make catch-up contributions to an IRA.

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[7]The Congressional Budget Act of 1974 mandates this sunset provision.

- It modifies the distribution rules for governmental 457 plan participants so that their deferred compensation funds will be taxed when they receive the distribution, not when it is made available to them.
- It repeals the coordination of deferrals between 457 and other elective deferral plans. Under former law, the maximum deferral amount for a 457 plan was reduced dollar for dollar by any contribution made to other types of retirement plans. The tax law change means that a person may defer the maximum annual contribution limit to a 457 plan as well as the maximum amount in a 401(k) or 403(b) plan.
- It expands the types of eligible tax-free rollover distributions to include distributions from qualified plans, 403(b) annuities, and 457 plans to other such plans and distributions from IRAs to qualified plans, 403(b) annuities, and 457 plans.
- It allows a surviving spouse to roll over distributions from a deceased spouse's plan to his or her own plan. Prior to this change, the tax-free rollover had to be made to an IRA.

Education Tax Provisions: This Part conforms North Carolina tax law on education incentives to the federal changes enacted last year. The more notable tax changes affecting education incentives include:

- It increases the annual maximum contribution limit to an education IRA from $500 to $2,000 per beneficiary.
- It allows education IRAs dollars to be used to cover expenses of students in grade, middle, and high schools.
- It eases the restrictions and limitations when using an Education IRA with other education initiatives, such as the Hope or Lifetime Learning tax credit.
- It moves the annual contribution deadline for Education IRAs from December 31 to April 15 of the following year.
- It provides that distributions from Section 529 Plans will be income-tax free up to the amount that is used to pay qualified higher education expenses.[8] Under former law, participants enjoyed only the benefit of tax-deferred contributions and investment growth.
- It allows a person to transfer 529 plan credits from one program to another for the benefit of the same beneficiary without incurring a taxable event.
- It extends the deduction for employer-paid college expenses to include graduate courses.

Estate Tax Provisions: North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced its inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government.[9] EGTRRA made two changes that affect the estate tax:

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[8] North Carolina currently allows tax free distributions for North Carolina plans. Section 3.5 of the bill repeals the State deduction.

[9] As of July 1, 2001, 36 other states, plus the District of Columbia, impose only the "pick-up tax".

- It phases out the estate tax over the next eight years by increasing the exclusion amount from $675,000 in 2001 to $1 million in 2002-03, $1.5 million in 2004-05, $2 million in 2006-08, and $3.5 million in 2009. There is no need for an exemption amount after 2009 since the tax is repealed in 2010. However, the tax is scheduled to reapply in 2011 unless a future Congress makes the repeal permanent. If the tax were reinstated in 2011, the exclusion amount would be $1 million. **This bill would conform North Carolina's exemption limits to the federal exemption limits to ensure that estates in North Carolina do not have to pay State tax if there is no federal tax due.**
- It phases out the state death tax credit over the next four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and repealing it entirely in 2005. **This bill does NOT conform to the phase out of the state death tax credit for two years.**[10] Therefore, under this bill an estate of a decedent dying on or after January 1, 2002, and before January 1, 2004, would owe North Carolina estate tax to the same extent that it would be owed without regard to the phase-out of the credit. The January 1, 2004, sunset ensures that the State will have to revisit this issue next year.

Because North Carolina's estate tax is based upon the federal credit for state death taxes, the repeal of the state death tax credit in 2005 and the ultimate repeal of the federal estate tax in 2010 will mean that the State must decide whether to replace or repeal its estate tax in the future.

Accelerated Depreciation Provisions: Under the Job Creation and Worker Assistance Act of 2002, a taxpayer is allowed an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 11, 2001, and before September 11, 2004. The taxpayer is still entitled to the normal first-year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation. This provision affects both corporate and individual income taxpayers.

The change in federal law results in a taxpayer recovering the basis in the asset sooner than under former law; however, over the life of the asset the taxpayer still receives the same benefit. This bill does not conform State law to the accelerated depreciation schedule allowed under federal law.[11] However, under this bill a taxpayer will continue to be able to deduct the same amount of an asset's basis under both federal and State law; it is just that the timing of the

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[10] As of July 3, 2002 the following states have acted to decouple from the phase-out of the state death tax credit for some period of time or have introduced legislation to that effect: Connecticut, Illinois, Maine, Maryland, Minnesota, Nebraska, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The following states will remain decoupled unless they take legislative action: Arkansas, District of Columbia, Kansas, New York, Oklahoma, Oregon, Virginia and Washington. (Source: Center on Budget and Policy Priorities)

[11] As of July 3, 2002, the following states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin. In addition, New York City has decoupled from the bonus depreciation allowance. Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities)

deduction will differ. To accomplish this decoupling from the federal accelerated bonus depreciation, the bill does two things:

- It provides that a taxpayer must add back to federal taxable income a percentage of the additional 30% accelerated depreciation in the year the accelerated depreciation is claimed for federal purposes.[12] The percentage is 100% for taxable years before 2004 and 80% for the 2004 taxable year. This add-back means that for State tax purposes, a taxpayer would deduct less in tax years 2001-2005 than it would have deducted if the State conformed to the accelerated depreciation law. The amount of the deduction will be the normal first year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation amount allowed under federal law (plus, in 2004, 20% of the bonus deprecation).
- In tax years beginning on or after January 1, 2005, it provides that the taxpayer may deduct from federal taxable income the amount of the add-back, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years – the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the amount of revenue the State receives over the affected years.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV of this bill would allocate to local governments 70% of the State's expenses in collecting the unauthorized substance tax. The expenses would be drawn from local sales tax revenues. Under current law, the following expenses are deducted from local sales tax distributions: costs of the Property Tax Division, costs of the Property Tax Commission, the costs of the Institute of Government in operating a training program in property tax appraisal and assessment, and the costs of the Local Government Commission.

The General Assembly first imposed the unauthorized substances tax in 1989 to generate revenue for State and local law enforcement agencies and for the General Fund. Seventy-five percent of the tax collected is distributed to the State or local law enforcement agency that conducted the investigation that led to the tax assessment. The remaining 25% is credited to the General Fund. This bill does not change this revenue allocation.

PART V. INSURANCE REGULATORY CHARGE

[12] For tax years beginning before October 1, 2001, the add-back must be taken in the first taxable year beginning on or after October 1, 2001, so that the taxpayer will not recognize any retroactive tax increase.

Part V of this bill sets the insurance regulatory charge at the same rate as last year's rate: 6.5% for the 2002 calendar year. The insurance regulatory charge is a tax that was enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's premiums tax liability. The insurance regulatory charge is imposed on insurance companies, health maintenance organizations, and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations and health maintenance organizations do not pay premiums tax at that rate.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the tax rate for the public utility regulatory fee for the 2002-2003 tax year at the same rate as last year's rate: 0.1%. This rate must be set by the General Assembly each year. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of SL 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

Part VI also sets at $200,000 for the 2002-2003 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. This is the same rate that was in effect for the 2001-2002 fiscal year. The North Carolina Electric Membership Corporation is the only electric membership corporation that fits this description. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the

corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Corporation will be passed on to its member electric membership corporations.

PART VII: [RESERVED]

PART VIII: SECURE LOCAL REVENUES

Sections 8.1 through 8.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

- Section 8.1 - Beer and wine tax.
- Section 8.2 - Franchise gross receipts tax.
- Section 8.3 - Piped natural gas tax.
- Section 8.4 - Sales tax on telecommunications.
- Section 8.5 - Powell Bill funds.
- Section 8.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 8.7 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the

funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

PART IX: CLOSE CORPORATE TAX LOOPHOLES

This Part closes three corporate tax loopholes that allow some corporate profits to escape taxation and give corporate tax planners an opportunity to avoid existing taxes on corporate income and assets. The first loophole is caused by the definition of business income used in the corporate income tax law; the second loophole is caused by the treatment of certain sales in the formula for apportioning business income to the State for corporate income tax purposes; and the third loophole is caused by the different franchise tax treatment of corporations and limited liability companies.

Definition of Business Income: Section 9.1 of this Part amends the definition of "business income" to include all income that is apportionable under the U.S. Constitution, effective for taxable years beginning on or after January 1, 2002.

Corporations that do business in more than one state divide up their income among those states for income-tax purposes. Business income is apportioned based on a formula that takes into account how much sales, property, and payroll the corporation has in each state. Nonbusiness income is allocated to a state based on its connection with that state. In the most basic terms, nonbusiness income could be described as income that is earned in an unrelated sideline activity of the corporation.

As an analogy, each interstate corporation's income is in two "pies" - a business income pie that is divided up among the states in which it does business, and a nonbusiness income pie that is given entirely to the state it is connected to.

In an ideal system, all states would follow the same rules for dividing up interstate corporations' income for tax purposes, so that no more and no less than 100% of every corporation's net income would be subjected to state income tax. However, different states have different laws and even when the laws are the same, they may be interpreted differently. In theory, this can result in the taxation of more than 100%, as well as less than 100%, of a corporation's net income. In practice, corporate tax planners take the opportunity to create "nowhere" income - income that no state can tax. Instead of each state receiving its piece of the business income pie, some pieces are thrown away. Thus, although a corporation may do substantial business in North Carolina, much of its otherwise taxable business income may be characterized as nonbusiness, so that North Carolina gets no piece of it.

These tax avoidance schemes are possible not only because different states have different laws, but also because states such as North Carolina have laws that are vague or too narrow. In North Carolina, income is business income if it relates to the regular trade or business of the taxpayer. This definition is vague and narrower than what is allowed under the United States Constitution. If North Carolina is entitled to tax a significant percentage of a corporation's

business income, the corporation may try to shift much of its income into the nonbusiness pie, which North Carolina does not share in. This may be true even though the corporation has deducted as a business expense the same items that it now claims are not business items when the time comes to pay tax on profits. Recent court decisions in North Carolina have upheld this tax avoidance technique. Examples of the types of business income that corporations most often recharacterize are rents, royalties, gain or loss from the sale of property, interest, and dividends.

This proposal would change the definition of business income to include any income that the United States Constitution allows a state to treat as business income. This eliminates the current statute's vagueness and narrowness, which allow it to be used by corporations to create "nowhere" income that should otherwise be taxable in North Carolina. One effect of this change will be to include income from extraordinary events, such as a liquidation of a division, in apportionable income, consistent with the Department of Revenue's historical position, as illustrated by its administrative rules, before the North Carolina Supreme Court's decision in *Lenox v. Tolson.* A corporation's income earned out of state from unrelated business activity that makes up a discrete business enterprise would continue to be nonbusiness income that cannot be apportioned - it would continue to be allocated to the state to which it is connected.[13]

26 states including North Carolina use the vague, unnecessarily narrow definition of business income.

18 states have a broader definition of business income:

- 5 states have the law proposed in Section 9.1 of the bill (define business income as all that the U.S. Constitution allows state to apportion):
    1. Florida
    2. Iowa
    3. Minnesota
    4. Pennsylvania
    5. Texas
- 13 states apportion all corporate income. These states' approach would gain less revenue than the proposal in Section 9.1 because it would relinquish the right to tax true nonbusiness income of North Carolina-headquartered businesses. The 13 states include:
    1. Georgia
    2. South Carolina
    3. Virginia

In 1996, an economist with the Federal Reserve Bank of Boston published a study of the effect of state tax policy on economic development. The study looked at various manufacturing industries in 22 states - including most major manufacturing states - and found no statistically significant correlation between business tax burdens and the location of new investment.

[13] Several examples of the effect of this proposal are at the end of this summary.

Throw-out Rule for Corporate Apportionment: Section 9.2 of Part IX would exclude certain out-of-state sales from the base of the sales factor used to apportion business income to North Carolina, effective beginning with the 2002 tax year.

Like the previous provision, this proposal would bring under North Carolina's corporate income tax a part of a corporation's "nowhere" income that is currently not being taxed by any state. Under current law, the formula for determining how much of the business income pie goes to North Carolina focuses on sales, payroll, and property in North Carolina. The sales factor is a ratio of sales in North Carolina to all sales everywhere. Sales are considered to be "in" the state where the purchaser receives the item. Under the sales factor formula, the more sales a corporation has that are not in North Carolina, the smaller the sales factor used to calculate North Carolina's piece of the business income pie - because the formula assumes those sales will go into another state's piece of the business income pie.

But some sales don't go into any state's piece of the pie. That may be because they are made in a state that cannot tax the corporation or because they are made to the federal government and so one cannot tell which state they are made in. Without the throw-out rule (or a similar rule called the throw-back rule), 50% to 100% of the profits of a state's corporations may be "no where" income, according to a 2002 article published by Michael Mazerov of the Center on Budget and Policy Priorities.

Under Section 9.2 of the bill, "nowhere" sales (sales where the purchaser is the federal government or is located in a state that cannot tax the corporation or a country that does not tax the income) are excluded from the sales factor formula so that they do not reduce the ratio that determines how much of a corporation's business income North Carolina can tax. Thus, if another state cannot consider the sales in calculating its piece of the pie, they will not escape tax entirely - instead, there will be an increase in North Carolina's piece of the pie. If every state adopted the throw-out rule, then 100% of a corporation's interstate income would be taxed - there would be no "nowhere" income.

Here is an example of the throw-out rule. Corporation X has 20% of its sales in North Carolina, 20% of its sales in Virginia, and 60% of its sales in Tennessee. The corporation has no nexus with Virginia so Virginia cannot tax its income. Tennessee, like North Carolina current law, has no throw-out or throwback rule. Under current law, the sales factor for North Carolina would be 20% divided by 100%, or 1/5. The sales factor for Tennessee would be 60% divided by 100%, or 3/5. There is no sales factor for Virginia. Thus, the sales factors for North Carolina and Tennessee add up to only 4/5 of the company's sales. As a result, less than 100% of the company's business income will be apportioned to those states for taxation. If North Carolina adopted the throw-out rule, the 20% of sales to Virginia are subtracted from the denominator of the sales factor. Thus, North Carolina's sales factor would be 20% divided by 80%, or 1/4. Because 1/4 is more than 1/5, a larger proportion of the corporation's income would be allocated to North Carolina. If Tennessee also adopted the throw-out rule, its sales factor would be 60% divided by 80%, or 3/4. Thus, the sales factors for the two states would add up to 100%

and all of the corporation's sales would be considered in apportioning its business income between the two states.

The throw-out rule and its sibling, the throwback rule, are not new. They predate the 1959 federal law limiting a state's ability to impose corporate income tax on corporations whose only connection with the state is soliciting orders there. The following information on states that do and do not have the throw-out rule or the throwback rule comes from Michael Mazerov of the Center on Budget and Policy Priorities. After the name of each state is listed the percent increase or decrease of manufacturing jobs in that state during the period 1995-2000. For that period, NC's manufacturing jobs decreased 9.5%.

21 States, including North Carolina, do NOT have a throw-out or throwback rule. These states include:

State	Job Loss or Gain
• Florida	0.0%
• Georgia	+0.1%
• South Carolina	-8.0%
• Tennessee	-5.7%
• Virginia	-3.5%

The following 25 States HAVE the throw-out or throwback rule. [14] (The underlined states have the throw-out rule.)

State	Job Loss or Gain
• Alabama	-7.9%
• Alaska	-18.3%
• Arkansas	-3.1%
• California	+8.4%
• Colorado	+6.7%
• Hawaii	+1.2%
• Idaho	+8.2%
• Illinois	-1.8%
• Indiana	+0.6%
• Kansas	+9.8%
• Maine	-6.5%
• Mississippi	-9.3%
• Missouri	-4.1%
• Montana	+6.0%
• New Hampshire	+3.0%

[14] Washington, D.C. also has the throwback rule, bringing the total to 26. In addition, Massachusetts technically has the throwback rule but Mazerov points out that its rule is full of loopholes so that it is not effective.

- New Jersey[15] -7.4%
- New Mexico -5.1%
- North Dakota +17.4%
- Oklahoma +6.7%
- Oregon +6.0%
- Texas +5.2%
- Utah +5.6%
- Vermont +8.4%
- West Virginia -2.1%
- Wisconsin +2.5%

According to Mazerov, this information shows that states with the throw-out and throwback rules (and the royalty loophole closing North Carolina enacted last year) are disproportionately represented among states with net manufacturing gains.

LLC Franchise Tax: In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole that allowed corporations to avoid franchise tax on their assets by transferring their assets to a controlled limited liability company (LLC). Corporations pay franchise tax on their assets but LLCs do not pay franchise tax on their assets. Tax planners helped many corporations avoid most of the franchise tax they would otherwise owe by setting up an LLC for the purpose of holding the assets on behalf of the corporation. Although the corporation's business continued in the same way, the corporation eliminated most of its franchise tax through this paper transaction.

The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[16] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

Section 9.3 of this Part broadens the approach of the 2001 legislation to include "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. This section would become effective beginning with payments due in March 2003. "Related members" is a term defined in the "trademark royalties" provision of last year's loophole bill and includes shareholders, partnerships, etc.

If a corporation and its related members together indirectly own at least 70% of an LLC's assets, this Part provides that each corporation pays franchise tax on its relative share of the LLC's

[15] New Jersey just enacted the throwback rule in 2002.

[16] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

assets. The relative share is calculated after excluding those related members who are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme. The language of the bill accomplishes this by stating that the following percentage of the LLC's assets are taxable to the corporation: "The attributable percentage is equal to the percentage of the limited liability company's assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations."

Here is an example:

A parent corporation, its subsidiary, and a major shareholder of the parent form a partnership to own an LLC that will own assets on behalf of the parent and subsidiary. The LLC's documents provide that upon dissolution its assets are distributed as follows:

- Parent Corporation: 20%
- Subsidiary Corporation: 45%
- Shareholder: 35%

Under current law, the assets would remain free of franchise tax. If this Part were enacted, the parent corporation would pay franchise tax on 31% of the assets and the subsidiary corporation would pay franchise tax on 69% of the assets. Those are their relative shares of the total once you exclude the non-corporate owner.

The approach taken by this Part is much broader than the 2001 legislation and is intended to anticipate the creative paper relationships tax planners may devise to try and avoid the franchise tax. The breadth of the provision is such that it could apply to a "legitimate" situation, such as an individual who is the sole shareholder of a corporation and who later forms an LLC with an associate. Under this proposal, the corporation would pay tax on the LLC's assets. Unfortunately, there does not appear to be a way to distinguish this type of situation from one in which the corporation is manipulating relationships to avoid its franchise tax. With different tax treatment of similar entities, tax planners can try to manipulate relationships to fall into the untaxed category. Because corporations and LLCs are similar, there may not be a strong policy reason to treat them differently for franchise tax purposes.

PART X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

Part X of this bill enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two counties and 25% for buildings located in other tiers. In 2000, the General Assembly enacted legislation providing that the 75% credit is also allowed for buildings located in one of 26 counties that sustained severe or moderate

damage from a hurricane in 1999. This increase in the amount of the credit was made effective for buildings that are allocated a federal credit on or after January 1, 2001. The federal tax credits are allocated in December of each year. Thus, those taxpayers who made investments in hurricane counties and were allocated federal credits in December 2000 are not eligible for the enhanced State credit. This act would backdate the effective date for eligibility for the enhanced State credit to from 2001 to 2000, thereby including those who were allocated federal credits for investments in hurricane counties during 2000.

EXAMPLES RELATING TO THE DEFINITION OF "BUSINESS INCOME" IN SECTION 9.1.

Investment in an unrelated corporation. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A buys stock in Corporation B. Corporation A and Corporation B are not involved in the same industry and the stock is held for investment purposes only. Corporation A does not actively participate in the management of Corporation B and does not integrate operations with Corporation B. Corporation A recognizes no economies of scale due to its ownership interest in Corporation B. Corporation A and B are not unitary. Corporation A sells the Corporation B stock and recognizes a capital gain. Under this bill, the capital gain is not apportionable to North Carolina. (See: Allied Signal, Inc. v. Director, Division of Taxation, 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992).) This income would also be nonapportionable, non-business income under current North Carolina law.

Reversion of excess pension funds. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A has made contributions to a defined-benefit employee pension plan for a number of years and has deducted these contributions from business income. The plan is found to be over-funded and a reversion of excess pension funds is allowed. The reverted funds are ordinary income for federal tax purposes. Under current North Carolina law, because the reversion is not a transaction that takes place in the regular course of business and because the right to a reversion is not an integral part of the corporation's regular course of business, the reverted funds are treated as non-business income and would not be subject to apportionment. (See: Union Carbide v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).) Under this bill, the reversion would be income subject to apportionment because it is income derived from a unitary business.

Liquidation of wholly-owned subsidiaries. Corporation X is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations A, B, and C are wholly owned subsidiaries of Corporation X. Corporations A, B, and C are domiciled in State 1 and have no business operations in North Carolina. Corporation X liquidates Corporations A, B, and C and immediately distributes the proceeds of the liquidations to Corporation X's shareholders. Corporation X recognizes a capital gain from the liquidations.

Liquidation of Corporation A - There is centralized management between Corporations X and A and their operations are functionally integrated. Corporations X and A therefore constitute a

unitary business, part of which is conducted in North Carolina. Under this bill, the proceeds of the liquidation of Corporation A would be subject to apportionment.

Liquidation of Corporation B - Corporations X and B are engaged in the same general line of business. Corporation B supplies Corporation X with the majority of a product used in Corporation X's manufacturing operations. Corporation B therefore performs an operational function in Corporation X's business. Under this bill, the proceeds of the liquidation of Corporation B would be subject to apportionment.

Liquidation of Corporation C - There is no centralized management, functional integration, or economies of scale between Corporations X and C, and Corporation C performs no operational function in Corporation X's business. Corporation C is not part of Corporation X's unitary business. Under this bill, the proceeds of the liquidation would not be subject to apportionment.

(Note: This bill removes the confusion under current law created by the decision in Lenox v. Tolson regarding the apportionability of income from the liquidation of an operating division or subsidiary. In *Lenox v. Tolson*, the Court found that the liquidation of a separate line of business was not a transaction in Lenox's regular course of business and was not a disposition of property integral to Lenox's regular trade or business. The Court held that the proceeds were therefore nonbusiness income and not apportionable. The Court, however, failed to analyze whether the acquisition or management of the property constituted integral parts of the corporation's regular trade or business, an analysis required under the actual language of the statute, the Department's administrative rules, and the Court's prior decision in *Polaroid v. Offerman*. As the dissent in Lenox points out, the property of ArtCarved was an integral part of Lenox's regular trade or business and the proceeds from the liquidation of this property should therefore have been apportionable business income under previous opinions of the Court.)

Receipt of dividends from wholly-owned subsidiaries. Corporation A is a retailer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations B, C, and D are wholly owned subsidiaries of Corporation A. Corporations B, C, and D are engaged in retailing in foreign countries. Corporation A has no functional integration and no centralized management with Corporations B, C, and D. Corporation A realizes no economies of scale due to its ownership of Corporations B, C, and D. Corporations B, C, and D are therefore not part of a unitary business with Corporation A. Corporations B, C, and D perform no operational function in Corporation A's business. Corporation A receives dividends from Corporations B, C, and D. Therefore, under this bill, as well as under current North Carolina law, this income would not be apportionable. (See: F.W. Woolworth Co. v. Taxation and Revenue Dept. of NM, 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819 (1982).)

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: July 16, 2002

TO: House Finance Committee

FROM: Dave Crotts, Linda Millsaps, and Richard Bostic, et al.
Fiscal Research Division

RE: SB 1292 House PCS CSLYxf-37 v. 33– Budget Revenue Act of 2002

FISCAL IMPACT

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

($million)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues					
General Fund					
-Delay Child Tax Credit	19.8	34.9			
-Delay Standard Deduction	31.9	12.6			
-Drug Tax Receipt*	.9	.9	.9	.9	.9
-Conform Internal Rev. Code	(16.9)	(25.5)	(49.7)	(76.9)	(77.3)
-Estate Tax Credit	(5.5)	(7.3)	(17.7)	(5.9)	
-Accelerated Depreciation**	38.2	68.8	22.8	0	(42.3)
-Conform Business Income	70.0	50.0	53.7	56.7	59.5
-Correct LLC Franchise Tax	20.0	21.2	22.5	23.8	25.2
-Corporate Throwout Rule	11.0	11.7	12.4	13.1	13.9
-Low Income Housing Credit	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)
TOTAL GENERAL FUND	**167.2**	**165.1**	**42.7**	**9.5**	**(22.3)**
Utilities Special Fund	11.9				
Insurance Reg. Fund	25.0				
Local Governments					
-Drug Tax Deduction	(.9)	(.9)	(.9)	(.9)	(.9)

*Department of Revenue will deduct 70% of costs of Unauthorized Substance Tax Division from sales tax proceeds.

**The impact of the changes is essentially revenue neutral over the long-term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of the asset. Thus, there will be substantial revenue losses starting in FY 2006-07.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Insurance, Utilities Commission, NC Housing Finance Agency, Local Governments.

EFFECTIVE DATE: Section 2.1(a) (Married Standard Deduction $5,500) effective for taxable years beginning on or after January 1, 2003; Section 2.1(b) (Married Standard Deduction $6,000) effective for taxable years beginning on or after January 1, 2004; Section 2.2(a) (Child Care Credit $75) effective for taxable years beginning on or after January 1, 2003; Section 2.2(b) (Child Credit $100) effective for taxable years beginning on or after January 1, 2004; Sections 3.2 and 3.3 (Accelerated Depreciation) effective for taxable years beginning on or after January 1, 2002; Section 3.4 (Estate Tax) effective on or after January 1, 2002 and applies to estates of decedents dying on or after that date and is repealed for estates of decedents dying on or after January 1, 2004; Section 4.1 (Unauthorized Substance

Tax) is effective June 30, 2002; Section 6 (Utility Regulatory Fee) is effective July 1, 2002; Section 9.1(a) and Sections 9.2(a) are effective for tax years beginning on or after January 1, 2002; Sections 9.3(a) and (b) are effective for taxes due on or after January 1, 2003. All other sections are effective when they become law.

BILL SUMMARY:

Parts I and VII of the bill are reserved.

Part II of the bill delays two tax breaks authorized in 2001. Section 2.1(a) delays the increase from $5000 to $5500 in the standard deduction for married filing jointly from tax year 2002 to 2003. Section 2.1(b) delays the increase from $5500 to $6000 in the same deduction from tax year 2003 to 2004. Section 2.2(a) delays the increase in the child tax credit from $60 to $75 from tax year 2002 to 2003. Section 2.2(b) delays the increase in the child tax credit from $75 to $100 from tax year 2003 to 2004.

Part III of the bill updates state statutory references to the Internal Revenue Code from January 1, 2001, to May 1, 2002, with exceptions for accelerated depreciation and the estate tax credit. This action would conform state tax laws to federal tax changes made in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Job Creation and Worker Assistance Act of 2002.

Under current law, North Carolina conforms to the federal estate tax in effect as of January 1, 2001. Thus, our pickup tax does not automatically tie into the 2001 federal changes. The estate tax language in this bill, coupled with the Internal Revenue Code conformity update provisions, would link North Carolina to the effect of the higher federal credits on the pickup tax but not to the phase-out of the death tax credit. The practical effect of the language in the bill is to ensure that with respect to the phased up federal credit for state death taxes, estates in North Carolina do not have to pay state tax if there is no federal tax due.

In the bonus depreciation conformity section of the bill, an add-back equal to 100% of bonus depreciation for the 2001-2003 tax year and 80% for 2004 is included in taxable income. The add-back is then offset by a subtraction from income starting with the 2005 tax year. This subtraction takes place in installments over a 5-year period.

Part IV allows the Department of Revenue to deduct 70% of the cost of the Unauthorized Substance Tax Division from the sales and use tax proceeds distributed to local governments.

Part V of the bill addresses the annual establishment of the insurance regulatory fee. Section 5(a) sets the insurance regulatory charge at 6.5%. The rate remains the same as in the previous year.

Part VI, Section 6(a) sets the regulatory fee rate for the Public Utilities Commission at 0.1%. This rate must be set annually and is the same as the previous year. Section 6(b) sets the regulatory fee for the electric membership corporations at a flat $200,000. This fee has remained the same since it was first imposed in 1999.

PART VIII attempts to limit the Governor's ability to withhold the local portion of revenues shared with cities and counties by declaring these funds local revenue. Specifically

Section 8.1 addresses beer and wine taxes, while Section 8.2 discusses the franchise tax on electricity. Section 8.3 considers the tax on piped natural gas. Section 8.4 addresses the tax on telecommunications. Section 8.5 considers the Highway Fund and Highway Trust Funds allocated as Powell Bill funds. Section 8.6 addresses the distribution to electric cities. Section 8.7 adds intent language to clarify that the funds committed or appropriated by the legislature for local governments shall not be reduced unless the governor has exhausted all other sources of revenue for the state. It also states that the Governor must be authorized by the legislature to withhold these funds.

Part IX makes the following corporate tax changes:
BUSINESS INCOME. Sec. 9.1 of the bill expands the definition of "business income" to include all of the income that may be apportioned under the U.S. Constitution. The practical effect of the provision is to include in the North Carolina income tax base more income from irregular events, such as the sale of a subsidiary.

THROWOUT RULE. For most multistate corporations, nationwide taxable income is apportioned among the states based on a three-factor formula that compares payroll in a state, property in the state, and sales within the state to the national totals for each of the respective factors. Thus, the sales factor would divide sales within North Carolina (numerator) by total national sales (denominator). Section 9.2 of the bill modifies the sales factor by taking out sales to the U.S. government from both the numerator and denominator and adding to the denominator "sales that are in a state in which the taxpayer is not taxable" during the tax year. In addition, the denominator would not include sales that are in a foreign country when that country does not subject the taxpayer to a tax on, or measured by, profits or income.

LLC FRANCHISE TAX. Legislation adopted by the 2001 General Assembly attempted to close a loophole that allowed corporations to avoid the state franchise tax by transferring potentially taxable assets to a controlled limited liability company (LLC). This occurs because LLCs do not pay franchise tax on their assets. The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[1] at least 70% of the LLC's assets. However, if the corporation interposed a partnership between it and the LLC holding its assets, then the 2001 change would not apply and the assets would continue to escape taxation.

Sec. 9.3 of the bill broadens the 2001 legislation to include "related members" (other entities and individuals) who may form a partnership with one or more corporate entities to own the LLC to which the corporate assets are transferred. "Related members" includes shareholders, partnerships, etc. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, the bill provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations.

Part X backdates the effective date from 2001 to 2000 for enhanced low income housing tax credits for projects located in counties damaged by Hurricane Floyd.

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[1] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

ASSUMPTIONS AND METHODOLOGY:

PART II: DELAY 2001 TAX BREAKS

STANDARD DEDUCTION – MARRIAGE TAX PENALTY

The term "marriage penalty" refers to the income tax situation where married individuals filing jointly pay more in tax than if the two individuals were unmarried filing as single persons. For example, the North Carolina standard deduction for single filers is $3,000, but for married filing jointly the standard deduction is $5,000. The personal exemption also favors single filers. For single filers, the personal exemption is $2,500 until you get to a maximum Adjusted Gross Income (AGI) of $60,000 where it drops to $2,000. For married filing jointly, the personal exemption is $2,500 up to $100,000 AGI, then drops to $2,000. State tax brackets also favor single filers as shown below:

Single	0 to $12,750	$12,751 to $60,000	$60,000>
Married filing jointly	0 to $21,250	$21,251 to $100,000	$100,000>

The 2001 General Assembly reduced the marriage penalty by increasing the standard deduction for married filing jointly taxpayers from $5,000 to $6,000. The standard deduction was increased to $5,500 in tax year 2002 and then to $6,000 in tax year 2003. The FY 2001-02 reduction in General Fund revenue was projected to be $9.7 million due to estimated payments and withholding by 762,340 couples in the first half of tax year 2002. The estimated loss for the following fiscal years is shown below.

FY 2001-02	-$9.7 mil.
FY 2002-03	-$32.0 mil.
FY 2003-04	-$45.0 mil.
FY 2004-05	-$45.8 mil.
FY 2005-06	-$46.5 mil.

Section 2.1(a) delays the first $500 increase in the standard deduction to tax year 2003 and Section 2.1(b) delays the additional $500 standard deduction increase to 2004. Since the original fiscal estimate assumed income tax withholding in tax year 2002 (second half of FY 01-02 and first half of FY 02-03), a delay in the standard deduction increase will result in a General Fund revenue gain from increased tax liability on 2002 tax returns. However, not all of the $41.7 million shown in the first two years of the chart will be regained by the General Fund next fiscal year. The 2003 effective date for the standard deduction increase means married filing jointly taxpayers can change their income tax withholding in the first half of 2003 and reduce their tax payments by $9.8 million. The net gain from this delay from 2002 to 2003 is $31.9 million ($41.7 million minus $9.8 million). For the $6000 standard deduction delayed until 2004, the estimated revenue loss is $32.4 million in FY 2003-04. Since the original estimate for FY 2003-04 was $45 million, the General Fund will gain $12.6 million that year.

Note: All revenue estimates for the standard deductions were calculated using the North Carolina Individual Income Tax Model. This tax model was created by the Barents Group for the

Department of Revenue and the General Assembly for use in estimating tax law changes. The model bases future year estimates on data from 1998 North Carolina individual income tax returns.

INCREASE TAX CREDIT FOR CHILDREN

The current $60 child tax credit was approved by the 1995 General Assembly. The 2001 General Assembly increased the child credit from $60 to $75 per child in tax year 2002 and from $75 to $100 in tax year 2003. The first increase will reduce General Fund revenue $19.8 million in FY 2002-03 for taxpayers filing returns in the spring of 2003. The second year increase will boost the revenue loss to $54.8 million in FY 2003-04. This tax change will benefit 18,354 single tax filers, 496,286 married couples, and 411,648 heads of households in tax year 2002. This revenue estimate was calculated using the North Carolina Individual Income Tax Model.

Section 2.2(a) delays the first $15 increase in the tax credit from 2002 to 2003 and Section 2.2(b) delays the second $25 increase from 2003 to 2004. The delay will eliminate the $19.8 million General Fund loss for FY 2002-03 and result in a General Fund revenue gain of an equal amount. There is a revenue gain of $34.9 million in FY 2003-04 because the $75 credit in 2003 has a $19.9 million revenue loss versus the $54.8 million loss for the now scheduled $100 credit.

PART III: UPDATE IRC REFERENCE

CONFORMITY

Section 3.1 changes the state tax law reference to the Internal Revenue Code from January 1, 2001, to May 1, 2002. Since North Carolina individual and corporate income tax law tracks the federal income tax law, it is necessary each year to update state statutory references to the Internal Revenue Code (IRC). Congress enacted two major bills in calendar years 2001 and 2002 that have a negative revenue impact on the state General Fund.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) included numerous provisions that impact North Carolina individual and corporate income tax. This bill conforms the state to the education provisions in the bill that affect education IRAs, Qualified Tuition Plans, deduction for higher education expenses, interest from student loans, and employer provided assistance. The bill conforms to the pension provisions in the act that affect IRA contribution limits, deferred comp plan deferral limits, and plan portability. The bill accepts changes in the phase out of itemized deductions and personal exemptions beginning in 2006. However, the bill does not conform to the estate tax changes in the act.

The state will conform to the Job Creation and Worker Assistance Act of 2002 except for the accelerated depreciation rules. Included in the bill were changes to net operating losses, the extension of expiring tax provisions, and a new above the line $250 deduction for teachers' classroom expenses.

The estimate of the state's revenue gain or loss from the federal changes is based on the fiscal analysis of the Congressional Joint Committee on Taxation. The federal analysis includes the effects of certain behavioral responses to tax proposals, including shifts between nontaxable and taxable sources of income, changes in amounts of charitable giving, and changes in the timing of realization of some sources of income. To derive an estimate for North Carolina for individual income tax changes, the federal income tax receipts for the U.S. were compared to the North

Carolina General Fund income tax receipts for the July 2000 to July 1 2001 period (with adjustments for earmarks and refunds). The resulting percentage was .735%. For corporate income tax, a .59% rate was derived using the 1997 US Economic Census on Manufacturing.

The state revenue impact from conforming to the two federal bills is as follows:

Conformity	($million)				
Category	02-03	03-04	04-05	05-06	06-07
Economic Growth and Tax Relief Reconciliation Act of 2001					
Education	-14.6	-20.5	-25.3	-27.8	-15.8
Pensions, IRA's	-6.1	-14.3	-18.5	-24.7	-29.4
Other					-12.8
Job Creation and Worker Assistance Act of 2002					
Net operating losses	-4.7	-3.9	2.5	1.7	1.1
Other	8.5	13.2	-8.4	-26.1	-20.3
	-16.9	**-25.5**	**-49.7**	**-76.9**	**-77.3**

ACCELERATED DEPRECIATION

The first step in the analysis of Sections 3.2 and 3.3 was a simulation of the impact of the 30% bonus depreciation and the add-back on individual projects. A project size of $10 million was selected, although the analysis is the same regardless of the magnitude of the investment. Bonus depreciation is eligible for projects with a class life of up to 20 years. Thus, the following classes of asset lives would be impacted.

Class (Years)	Class Life Range (Years)
3	Less than 4
5	4-9
7	10-15
10	16-19
15	20-24
20	25 or more

The analysis assumed the use of the modified accelerated cost recovery system (MACRS). This system includes depreciation schedules based on double-declining balance depreciation rates for 3, 5, and 7-year property. For other classes, straight-line depreciation must be used. In addition, the analysis used the "mid-year convention" for the assumed investments.

The simulation looked at investments for all class lives eligible for bonus depreciation. Each calculation compared the current law depreciation with that under the 30% bonus. Under the 30% bonus schedule, the "regular depreciation" declines since it is calculated against the depreciation base after the application of bonus depreciation. Thus, the decline in normal depreciation offsets the first-year increase in total depreciation due to the bonus amount so that over the life of the asset there is no net change in the depreciation taken.

In addition, the impact of the 100% and 80% addbacks, and the "giveback" of the addback beginning in 2005, is calculated. The first-year net impact of bonus depreciation varies by asset class, with the largest short-term tax savings going to the assets with the longest lives. **The net impact of both the bonus depreciation and add-back are essentially zeroed out over the long term.**

To determine the impact on state revenues, a mathematical relationship was established between the net impact of "bonus depreciation with add-back" and "bonus depreciation only". This ratio was then compared to the "bonus depreciation only" fiscal impact of numerous states as reported in the National Conference of State Legislatures (NCSL) survey. These estimates were then adjusted to North Carolina based on corporate tax receipts in each state. In addition, the recent report of the Center for Budget and Policy Priorities (CBPP) contained estimates for particular states. The estimate used in this analysis relies heavily on the CBPP report.

In addition to the steps listed above, Fiscal Research also reviewed the fiscal impact statements in the three states that have adopted add-backs. The states are Nebraska (85% add back), Ohio (83.33%), and Minnesota (80%). This review, coupled with phone conversations with tax analysts in all three states, indicated that the add-backs used make the bonus depreciation approximately revenue-neutral for FY 2002-03. For future years, the net impact depends on the "add-back subtraction" schedule adopted.

The discussions with other states confirmed the difficulty of developing a precise fiscal estimate. The biggest problem is that after simulating the case-by-case impact of the proposal on investments with different class lives, there is no way to know how to weight the different simulations. The reason is that capital investment data compiled by the U.S. Department of Commerce does not provide a breakdown by asset life.

A particular problem encountered was the 2001 tax year. The federal change was effective for investments after September 10 of the year. Under current Department of Revenue instructions, calendar year taxpayers were able to use bonus depreciation for the 2001 tax year if they were able to modify their return in the few days between the federal enactment and the March 15 filing date. Other affected taxpayers will be eligible for a refund, but only after action by the General Assembly. These different possibilities make it difficult to determine how much of the 2001 tax year impact occurred in FY 2001-02 versus FY 2002-03.

The cash-flow estimates are conservative in terms of the weighting of asset classes in the calculations.

ESTATE PICK UP TAX

The regular inheritance tax was repealed in North Carolina by the 1998 General Assembly, effective for deaths occurring on or after January 1, 1999. Following the tradition of the other 36 states that have repealed their primary death tax, a "pickup" tax continues to be levied in North Carolina to use up the credit allowed on the federal estate tax return for state death taxes. In the absence of such a levy, the federal tax liability of the estate would be increased and potential state dollars would flow to the U.S. treasury.

In 2001 the congressional tax package made two changes that will have an effect on a small number of large estates as well as pickup tax collections in many states. First, the federal tax was phased out over a number of years until it is completely eliminated in 2010. This was accomplished primarily through higher federal credits. In the first few years, the higher credits reflect an acceleration of the credit phase-up under the 1997 federal tax relief bill. In addition, the 2001 bill phases out the state death tax credit over four years, beginning with deaths occurring on or after January 1, 2002.

The starting point for the analysis of Section 3.4 was the pickup tax revenue estimates included in the official revenue forecast used in amending the FY 2002-03 General Fund budget. The FY 2002-03 forecast of $117.3 million of pickup taxes was grown by 4% per year to determine receipts for future years (until the tax is effectively eliminated due to the repeal of the federal credit for state death taxes). Fiscal Research then reviewed the projected cost for each year of full conformity to the 2001 federal changes contained in the Center For Budget and Policy Priorities (CBPP) report. In addition, we looked at state by state estimates contained in the NSCL survey and adjusted these numbers to North Carolina by using state-specific federal estate tax return data for 1993-99 (reported gross estate numbers). The estimates finally adopted for purposes of this fiscal note were slightly higher than the CBPP numbers and near the top of the range of the estimates of other states.

This "full conformity" estimate was then modified to determine the "higher federal credits" conformity ("partial conformity") cost by comparing the CBPP estimates for full conformity and partial conformity for the 2002-03 fiscal year (18%). This led to an annualized FY 2002-03 projection of $7.3 million. For future years, the partial conformity estimate was based on the relationship of the CBPP projection of partial conformity for North Carolina to full conformity.

PART IV: UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV will reduce the General Fund share of the administrative costs of the Unauthorized Substance Tax Division of the Department of Revenue, which administers the excise tax on unauthorized substances. Seventy-five percent (75%) of the tax proceeds are distributed to the law enforcement agencies that conducted the investigations that led to the assessments, and twenty-five percent (25%) of the tax proceeds are credited to the General Fund. In some years, the amount credited to the General Fund has not covered the costs of the Unauthorized Substance Tax Division.

Local law enforcement agencies receive most of the proceeds from the 75% that is distributed to law enforcement agencies. Therefore, the proposal is that local entities bear their proportionate share of the costs of the Unauthorized Substance Tax Division. To accomplish this, seventy percent (70%) of the costs would be taken from local sales and use tax revenue, as this percentage of the Division's cost is considered to be for the benefit of the local entities. This change in cost assignment requires an amendment to G.S. 105-501. This proposal does not change the amounts that are distributed to local law enforcement agencies. It simply recognizes that the Unauthorized Substance Tax Division primarily benefits local entities and that local entities should therefore bear their share of the expense.

The amount of the costs to be taken from the local sales and use tax is 70% of the costs of the Division rather than 75% because a small part of the amount that is distributed to law enforcement agencies is distributed to State law enforcement agencies. By the Department's records, the amount

distributed to State law enforcement agencies is less than 5%. Using 70% instead of 75% therefore ensures that the costs borne by local entities are proportionate to the benefits they receive.

The General Fund will be reimbursed from local Sales and Use Tax funds transferred to a non-tax GF revenue account for 70% or $886,893 of the division's operating budget. Essentially, relieves the GF of a portion of the division's operating expense.

PART V: INSURANCE REGULATORY CHARGE

Part V of the bill sets the insurance regulatory charge at 6.5%. This is the same amount set in the previous year. This fee is assessed against the 1.9% premiums tax paid by insurers or against the presumed premiums tax that would be paid by HMOs and Article 65 companies (Blue Cross/Blue Shield) if taxed at 1.9%. The revenue is used to reimburse the General Fund for appropriations to the Department to pay expenses incurred in regulating the industry and other industries and to other departments as specified in G.S. 58-6-25(d).

The premiums tax collections for FY 2002-2003 are estimated to be $315.79 million. The HMOs and the Article 65 companies must pay a regulatory charge based on their presumed premiums tax at 1.9% (they pay .833% in 2002 and 1% in 2003). The presumed premium tax for the HMOs and Article 65 companies is estimated to be $68.83 million.

With the premiums tax collections of $315.79 million and the presumed premiums tax of $68.83 million from the HMOs and Article 65 companies, the total base against which the insurance regulatory charge will be assessed is estimated to be $384.62 million. Applying the 6.5% regulatory fee to the $384.62 million base would generate $25 million in regulatory fee revenue.

The certified budget for the Department, based on actions taken during the 2001 Session, is $23.5 million. In addition to reimbursing the General Fund for appropriations to the Department, the Insurance Regulatory Fund will also reimburse the General Fund for the $486,000 appropriated to support the Managed Care Patient Assistance Program (MCPAP), established by S.L. 2001-446. The total reimbursement to the General Fund is estimated to be $24 million. The Department estimates that the reserve will have a balance of $11.98 million at the beginning of FY 2002-2003. The total available from the reserve fund of $11.98 million and the estimated collections of $25 million will be $36.98 million. The total available less the estimated General Fund reimbursement of $24 million will leave a year-end reserve balance of $12.98 million. This reserve is above one-third of the estimated General Fund reimbursement.

The above calculation is based on the certified budget for FY 2002-2003 and does not include any adjustments to the FY 2002-2003 Budget that are or will be under consideration during the 2002 Session. Based on the above, the regulatory surcharge rate of 6.5% is sufficient to defray the estimated cost of the operations of the Department and provide for a reserve fund. The Department recommends that the rate remain the same and would not recommend a decrease in the rate because of the unknowns in the economy.

PART VI: REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the fees for regulation by the North Carolina Utilities Commission ("Commission"). Section 6(a) of the bill sets the rate at 0.1%, the same as the current rate. Revenue from this fee, which is assessed against regulated public utilities, is used to support the operations of both the Commission and the Public Staff. Based on estimated FY 2002-03 jurisdictional revenues of $10,854,768,332, the regulatory fee will produce $11,700,238. For the same period, the Commission estimates that the combined operations of the Commission and Public Staff will require total expenditures of not less than $11,695,970. The net change in the Commission's Accumulated Fee Margin Reserve Account is therefore approximately $4,268. The estimated balance in this account as of June 30, 2003, is $4,941,393. This represents approximately five months of operating reserve.

Section 6(b) of the bill sets the public utility regulatory fee to be paid by the North Carolina Electric Membership Corporation for the 2002-03 fiscal year at $200,000. In 1999 the initial fee of $200,000 was developed as a result of discussions between the industry and the Utilities Commission, based on what the Utilities Commission believed to be the cost associated with regulating the electric membership cooperatives. In 2001 the Utilities Commission provided information to Fiscal Research illustrating that these fees will support approximately 4000 hours of accounting, engineering, and legal time. This fee amount must be set by the General Assembly each year.

PART VIII: SECURE LOCAL REVENUES

In the spring of 2001, as a result of substantial budget shortfall, the governor escrowed $95.0 million of reimbursement payments to local governments. This payment is made as a reimbursement for revenues lost by the state's repeal of the property tax on various inventories. The funds were placed in an escrow account in case they were needed to balance the state budget on June 30, 2001. These funds were later released to the local units. In 2002, again facing a difficult fiscal situation, Governor Easley escrowed the spring inventory tax reimbursement to local governments. This $95.0 million was again placed in a special account to hold in case it was needed to balance the state budget in 2002. At the same time the governor announced he was holding an additional $114.0 million in reimbursements and shared revenues to secure his ability to balance the state budget. The $114 million included the following estimated amounts:

Fund Type	*Amount Withheld*
Franchise Utility Tax	
March Distribution	35.6
June Distribution	25.0
Piped Natural Gas	

March Distribution	6.9
June Distribution	11.8
Beer and Wine Tax	26.8
Homestead Exemption	7.9
TOTAL	**114.0**

Sections 8.1 – 8.7 are an attempt to secure these revenues from future gubernatorial action. This legislation has no direct impact on the budgets passed by the General Assembly, as these shared revenues have not been used in the legislative process for state expenditures. However, the legislation could limit the options available to the Governor. Because of the lack of clarity about what actions will be required of the Governor in future years, and the impact this particular legislation will have on the individual's decisions, no fiscal estimate is possible on the impact of the legislation.

Part IX: CLOSE CORPORATE TAX LOOPHOLES

BUSINESS INCOME

The Tax Research Division of the Department of Revenue analyzed 1999 corporate income tax returns and found that the maximum amount of additional tax revenue from the proposal would be $293.4 million. For 2000, the maximum would be $442.5 million. The higher number for 2000 is due to an increase in the amount of nonbusiness income from all sources shown on 2000 returns and a higher weighted average apportionment factor.

The extent to which total reported nonbusiness income can be brought into the tax base depends on how much of this income is not reported to other states and whether there are certain types of nonbusiness income that could not be taxed under the federal standards in the bill. The Department of Revenue does not have a good feel for the magnitude of these factors. In addition, the impact of the 2001 recession has reduced the corporate tax base in North Carolina by 33% and economists are still cautious about the outlook for 2002 national corporate profits.

We have not found any situations in which states have recently adopted this legislation and thus had fiscal notes available. Many states have had such laws on the books for many years and a 1992 U.S. Supreme Court decision opened the door for states to pursue enforcement. New Jersey adopted the proposal this year but the quality of the fiscal information was lacking, partly due to the difficulty of making the estimate.

Based on discussions with the Department of Revenue and concern about the uncertainty surrounding the estimates, we have taken a very cautious approach to this estimate.

THROWOUT RULE

There is very little data from other states on this issue. The New Jersey corporation business tax reform package included the item but there was no statement of the methodology behind the fiscal estimate. We are concerned with the lack of quality data on the issue and feel that a conservative estimate equal to roughly 50% of the earlier proposed throwback rule would be workable. In our analysis, we consulted with the corporate staff of the Department of Revenue.

LLC FRANCHISE TAX

There is little available information on this matter. The fiscal estimate used for the 2001 proposal to address the issue was $10.8 million. Discussions with the Department of Revenue about the impact on some taxpayers indicated that the proposal would not only close some of the loophole not addressed last year but would also pick up some of the erosion in the corporate income tax due to the tax planning strategies that have taken place since the 2001 change or might occur in the future. Thus, the proposed change is broader than last year's action.

Part X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

The North Carolina Housing Finance Agency identified 8 projects authorized for a 25% state tax credit in 2000 that would qualify for the 75% state tax credit for those in counties damaged by Hurricane Floyd. These projects have been completed or are nearing completion thus the investors in the projects can begin taking the tax credit in FY 2002-03. Assuming the project investors use 100% of the available tax credit, the additional tax credits granted by this part is $10,727,800. Since the state tax credit is taken over five years, the General Fund revenue loss is spread over five fiscal years. The annual General Fund loss due to Part X of the bill is $2.15 million for Fiscal Years 2002-03 to 2006-07.

Projects	County	Federal Tax Credit	State Tax Credit @ 25%	State Tax Credit @ 75%	Additional Credit	2000 Tiers
#1	Craven	$2,648,010	$662,003	$1,986,008	$1,324,005	4
#2	Lenoir	$3,257,450	$814,363	$2,443,088	$1,628,725	3
#3	Lenoir	$2,530,000	$632,500	$1,897,500	$1,265,000	3
#4	Nash	$2,602,800	$650,700	$1,952,100	$1,301,400	4
#5	Pitt	$2,520,980	$630,245	$1,890,735	$1,260,490	4
#6	Pitt	$2,647,460	$661,865	$1,985,595	$1,323,730	4
#7	Wayne	$2,584,270	$646,068	$1,938,203	$1,292,135	3
#8	Wilson	$2,664,630	$666,158	$1,998,473	$1,332,315	3
			$5,363,900	$16,091,700	$10,727,800	

SOURCES OF DATA: Part II: Individual Income Tax Model. Part III: (1) The May, 2002 state-by-state survey of the National Conference of State Legislatures (**Recent Federal Tax Legislation and the States**); (2) A January, 2002 analysis of the Center On Budget and Policy Priorities on state options to conform to the 2001 federal estate tax changes; (3) Bonus depreciation fiscal estimate material from Ohio, Minnesota, and Nebraska; (4) Congressional Joint Committee on Taxation. Part VIII: Office of State Budget and Management. Part X: NC Housing Finance Agency

TECHNICAL CONSIDERATIONS: The January 1, 2002, effective date of the federal changes in Part III means that only three quarters of the 2002-03 fiscal year will be affected by the change since estates have up to nine months after death to file a return. In addition, the January 1, 2005, repeal of the state death tax credit on federal estate tax returns means that one quarter of FY 2005-06 revenues will be affected.

In Part IX of the bill, the 2002-03 estimate for the nonbusiness income change assumes that during the fiscal year the State would receive 100% of the 2002 tax year impact and about 40% of the 2003 tax year. For the other corporate changes, we did not assume that April and June, 2003 estimated tax payments would be adjusted up because the magnitude of the calendar year change is relatively small.

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June 12, 2002

MEMORANDUM

TO: Rep. Art Pope

FROM: Dave Crotts
Fiscal Research Division

SUBJECT: Fiscal Estimates for SB 1292 (Senate Budget Revenue Package)

You had requested a comparison for the 2002-03 fiscal year of the "partial conformity" estate tax provision in SB 1292 with the "no action" option and full conformity. If no action is taken, the state pick-up tax levied to use up the federal credit for state death taxes would not conform to the 4-year phase-out of the credit under the 2001 federal legislation. This means that the state would continue to levy the tax on the basis of the federal credit in place prior to the 2001 federal change and, thus, there would be no direct impact on General Fund revenues.

The cost of fully conforming to the 2001 federal change would be $31.3 million. Since the federal credit phase-out begins with deaths occurring on or after January 1, 2002 and estates have nine months to settle their tax liability, the 2002-03 revenue loss is based on 3 quarters of impact.

The partial conformity option adjusts for the fact that under the new federal law, the unified gift and estate tax credits will rise from an effective exemption of $650,000 in 2001 to $1,000,000 in 2002. In subsequent years the federal credit will continue to phase up to $3,500,000 according to the schedule shown below:

Year	Federal Estate Tax Exemption
2001	675,000
2002	1,000,000
2003	1,000,000
2004	1,500,000
2005	1,500,000
2006	2,000,000
2007	2,000,000
2008	2,000,000
2009	3,500,000

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

As the federal exemption increases, some estates will no longer be required to file a federal return. If the state were not to update the pickup tax for the higher federal exemptions, some North Carolina estates would be required to pay a state tax even though there would be no federal liability. SB 1292 addresses this problem by conforming to the impact of the higher federal exemptions on the state pickup tax. The cost to the General Fund is estimated to be $5.5 million for 2002-03, or about 18% of the full conformity impact. The difference between the full estate tax conformity option and the partial conformity provisions of SB 1292 is equal to a $25.8 million savings in General Fund tax revenues.

You had also asked for a breakdown of the 2002-03 fiscal year impact on the General Fund of the accelerated depreciation item in the Senate tax package. Your request had to do with a comparison of the cost of the bonus depreciation versus the "net" depreciation after the inclusion of the add-back in the Senate bill. You also wanted a comparison to the "no action" option.

If no legislation were approved to update the conformity to the IRC depreciation rules, there would be no direct impact on General Fund revenues. An update to the 30% bonus depreciation feature in the 2002 federal legislation would reduce General Fund revenues by $213.2 million for 2002-03. If we include the impact of the add-back in SB 1292, there would be a net increase in General Fund revenue for 2002-03 of $38.2 million. This means that the effective amount of additional revenue from the add-back is $251.4 million.

The example below might highlight how the accelerated depreciation provisions in SB 1292 works:

$10,000 Investment
7-Year Depreciation Period
Mid-Year Convention

	2002 Tax Year
Current Law —	
Regular depreciation	1,429
New Law with Bonus Depreciation Only	
Bonus Depreciation (30%)	3,000
Regular Depreciation	1,000
Total Depreciation	4,000
Additional Depreciation	2,571
New Law With Bonus Depreciation and Add-Back	
Bonus Appreciation (30%)	3,000
Regular Depreciation	1,000
Addback to Income (100%)	(3,000)
Total Effective Depreciation	1,000
Net Change in Depreciation from Current Law	(429)

Sue Buehlmann (Rep. Pope)

From: Canaan Huie (Bill Drafting)
Wednesday, July 17, 2002 11:41 AM
To: Martha Harris (Bill Drafting); Rep. Art Pope
Cc: Richard Bostic (Fiscal Research); David Crotts (Fiscal Research)
Subject: RE: Other States on Deprecation

Minnesota requires taxpayers to add back 80% of the bonus depreciation.

-----Original Message-----
From: Martha Harris (Bill Drafting)
Sent: Wednesday, July 17, 2002 11:39 AM
To: Rep. Art Pope
Cc: Richard Bostic (Fiscal Research); Canaan Huie (Bill Drafting); David Crotts (Fiscal Research)
Subject: Other States on Deprecation

David and Richard, please add to this if you can.

Nebraska has an 85% Add-Back.
Ohio's Add-back is 5/6 (83.3%)
At least two states have 100% -- not sure which ones.

Here is the general info --

Accelerated Deprecation:

- As of July 3, 2002, the following 22 states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin.
- New York City has decoupled from the bonus depreciation allowance.
- Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities; Tax Analysts)

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Minutes
House Committee on Finance

July 17, 2002

The House Committee on Finance met on Wednesday, July 17, 2002, at 4:00 P.M., in Room 643 of the Legislative Office Building. The meeting was continued from two earlier Finance meetings on this day.

Rep. Gordon Allen, presiding Chair, called the meeting to order. The following members were present: Chairmen Buchanan, Luebke, and Wainwright; Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Cunningham, and Earle. Staff in attendance included Cindy Avrette, Trina Griffin, Mary Shuping, Martha Walston, Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, and Martha Harris.

Chairman Allen recognized and thanked pages Raymond Chin from Orange County, Matt Goodwin from Gaston County, Daniel Hurley (grandson of Representative Hurley from Fayetteville), and Kevin Kelly and Chris Carlton from Wake County.

Chairman Allen announced that this meeting had been called to discuss HB 1633, A BILL TO BE ENTITLED AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX, TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR, AND TO MAKE CONFORMING AND TECHNICAL CHANGES, which had been re-referred to the Finance Committee at today's House session.

Amendment No. 1. Rep. Buchanan was recognized to send forth an amendment. He explained that the amendment would accelerate the sunset of the State half-cent sales tax and also accelerate the one-half cents sales tax for the local governments and makes both of them effective at the same time, October 1, 2002. He moved for adoption of the amendment.

In the ensuing discussion, Rep. Luebke confirmed with staff that the amendment originally was discussed on the floor and the October date was put in the Bill on the advice of the Department of Revenue. They felt that retailers would have a problem implementing the September date.

Rep. Wainwright stated that the amendment would create an additional $200-million-plus hole in the budget, and based on all indications from Committee's deliberations, there had not been a consensus on how to raise revenue to fill the hole that already existed in the budget. He wondered where the Committee would get the revenue needed to fill the additional hole that this amendment would create.

Chairman Allen called on Rep. David Redwine, Co-Chair of the House Appropriations Committee, to comment on the budget. Rep. Redwine noted that the Senate's budget cuts were deeper than those anticipated for the House budget and commented that 55% of the budget is earmarked for education, 25% for human resources, and 10% for corrections, which totals 90% of the budget. He urged the Committee to pass the Bill.

Rep. Baddour said he truly believed the reimbursements to the local governments are not going to be there and urged the Committee to defeat this amendment and pass this Bill.

Rep. Gray suggested that Appropriations look at the various budget codes and their balances to see if there is any money there to fix some of the holes.

In reply to several questions from Committee members, Linda Millsaps of the Fiscal Staff said that the accelerated sales tax – the main bill – would net the State $252.2 million. By adding this amendment, it would take away from the State $248.6 million, leaving the State with a net of about $3.6 million.

By Roll Call Vote, Amendment No. 1 (Rep. Buchanan's) failed 20 to 12.

Amendment No. 2. Rep. Starnes was recognized to send forth his amendment. He explained that the amendment would rewrite line 3 on page 1 to read "OPTION SALES AND USE TAX, TO MAKE OTHER VARIOUS SALES AND USE TAX CHANGES, TO PROVIDE THAT LOCAL REVENUES." Following discussion, Amendment No. 2 failed by Roll Call Vote, 19 to 13.

Rep. Hackney then moved that HB 1633 be given a favorable report. The motion carried. Copies of the Bill, Amendments (including two Amendments to this Bill that were adopted by the House just prior to the Committee meeting) and Summary are attached as part of these minutes.

There being no further business, Chairman Allen adjourned the meeting at 6:00 P.M.

Respectfully submitted,

Representative Gordon Allen
Presiding Chairman

Nancy G. Brantley
Committee Assistant

Attachments:

House Bill 1633
Committee Report
Visitor Registration Sheet

4pm

VISITOR REGISTRATION SHEET

FINANCE — JULY 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Worsley	Greene County Manager
Lee Smith	Wayne Co Mgr.
George Tavares	Johnson N Johnson
[illegible]	NCICU
Jennifer Allen	MAMSI
Joy Peters	JP Assoc/MAMSI
Elizabeth Dalton	Bonz & Associates
Stacy Flannery	NCHCFA
Barbara Carolan	MFS's
Dee Freeman	Triangle J COG
David Nash	Hunton & Williams
Andy Sasol	NCDOR

VISITOR REGISTRATION SHEET

FINANCE — JULY 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Bonell	Melvin Bonell, LLS
Grainger Barrett	Cumberland County Attorney
ROGER STANCIL	City of FAYETTEVILLE
JASON BRADY	CITY OF FAYETTEVILLE
George C Parrish	County of Halifax
Robert B. Partin	Town of Scotland Neck
Kenneth Brantley	County of Halifax
Ken Kinion	A. I. G.
Darren Currie	Columbus County Government
Hazen Blackett	City of Whiteville
C. E. Wilson	columbus co. comm.
Randy Britt	Columbus Co. Comm.
Amon McKenzie	Columbus County Commissioner
Billy Joe Farmer	Columbus County
Gene W. Jones	Mayor, City of Whiteville
Will Taylor	intern

VISITOR REGISTRATION SHEET

FINANCE — JULY 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron George	Burke County
Trossie Wall	" "
Shayna Watts	intern
Dave Holec	City of Greenville
Ric Miller	City of Greenville
Reginaldo	ITRK
Glenn H. Worthington	Pitt Co Winterville, NC
George W. Griffin	CITY OF HAVELOCK N C
TOM PHILLIPS	City OF HAVELOCK
Don Beaver	Comm City of Havelock
Allen Joyner	City of Winston Salem PO 2511 WS 27102
DAVID BONE	TOWN OF CHADBOURN

Andrea Schrag	Rep. Alexander
Rick Beasley	City of Conover
Tom Moser	Commissioner City of Conover
Larry Johnson	Town of Valdese
Jeff Morse	Town of Valdese
Greg Cannon	Town of Valdese
Frances Hildebran	Town of Valdese
Phil Bazemore	Town of Monroe
Judy Davis	City of Monroe
Bobby Kilgore	City Monroe
Carol Lander	EGHS
Douglas Sealy	City of Monroe
Donald Brookshire	City of Mount Airy
ELLIS HANKINS	NCLM
Richard Hicks	Town of Fairmont
Rick French	Alexander County
Tom SOUTHERN	MAYOR - WALKERTOWN
Bruce Radford	TOWN OF Apex N.C.
Randy McCaslin	Town of Kernersville
JOHN HATTLE	MANAGER - WALKERTOWN
Tony Lease	Manager - Town of Kenly
ERIC WILLIAMS	HENDERSON MGR.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Allen, Buchnan, Luebke and Wainwright** (Chair/Chairs) for the Committee on **FINANCE.**

☒ Committee Substitute for
H.B. 1633 A BILL TO BE ENTITLED AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPITION SALES AND USE TAX, TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR, AND TO MAKE CONFORMING AND TECHNICAL CHANGES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1633

Committee Substitute Favorable 7/16/02

Short Title: Accelerate Local Option Sales Tax. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL ONE-HALF CENT LOCAL OPTION SALES AND USE TAX, TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR, AND TO MAKE CONFORMING AND TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~September 1, 2002."

SECTION 2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

"[ ] FOR [ ] AGAINST

one-half percent (½%) local sales and use taxes, ~~to replace the current one-half percent (½%) State sales and use taxes that end July 1, 2003.~~"in addition to all current State and local sales and use taxes." "

SECTION 3.(a) G.S. 105-520 reads as rewritten:

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a ~~month~~ quarter and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that ~~month.~~quarter.

(b) Per Capita. – The Secretary must, on a ~~monthly~~ quarterly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified

to the Secretary by the State Budget Officer. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each ~~month~~ quarter between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a ~~month~~ quarter if it is not entitled to a distribution under G.S. 105-501 for the same ~~month.~~quarter."

SECTION 3.(b) This section is repealed effective July 1, 2003.

SECTION 4.(a) G.S. 105-521 reads as rewritten:

"**§ 105-521. Transitional local government hold harmless.**

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

(1) Local government. – A county or municipality that received a distribution of local sales taxes in the most recent fiscal year for which a local sales tax share has been calculated.

(2) Local sales tax share. – A local government's percentage share of the two-cent (2¢) sales taxes distributed during the most recent fiscal year for which data are available.

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections.

(4) Two-cent (2¢) sales taxes. – The first one-cent (1¢) sales and use tax authorized in Article 39 of this Chapter and in Chapter 1096 of the 1967 Session Laws, the first one-half cent (½¢) local sales and use tax authorized in Article 40 of this Chapter, and the second one-half cent (½¢) local sales and use tax authorized in Article 42 of this Chapter.

(b) ~~Distributions.~~ 2002-2003 Distribution. – On or before September 15, 2002, the Secretary must multiply each local government's local sales tax share by the sum of two hundred seventy-eight million seven hundred eighty-five thousand six hundred dollars ($278,785,600). If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(c) Subsequent Distributions. – On or before September 15, 2003, and each September 15 thereafter, the Secretary must multiply each local government's local sales tax share by the estimated amount that all local governments would be expected to receive during the current fiscal year under G.S. 105-520 if every county levied the tax under this Article for the year. If the resulting amount is less than one hundred percent (100%) of the local government's repealed reimbursement amount, the Secretary must pay the local government the difference, but not less than one hundred dollars ($100.00).

(d) Estimated Amounts. – On or before May 1, 2003, and each May 1 thereafter, the Office of State Budget and Management and the Fiscal Research Division of the General Assembly must each submit to the Secretary and to the General Assembly a final projection of the estimated amount that all local governments would be expected to receive during the upcoming fiscal year under G.S. 105-520 if every county levied the tax under this Article for the fiscal year. If the Secretary does not use the lower of the two final projections to make the calculation required by this subsection, the Secretary must report the reasons for this decision to the Joint Legislative Commission on Governmental Operations within 60 days after receiving the projections.

~~(c)~~(e) Source of Funds. – The Secretary must draw the funds distributed under this section from sales and use tax collections under Article 5 of this Chapter.

~~(d)~~(f) Reports. – The Secretary must report to the Revenue Laws Study Committee by January 31, ~~2004,~~2003, and each January 31 thereafter, the amount distributed under this section for the current fiscal year."

SECTION 4.(b) G.S. 105-521 is repealed effective July 1, 2012.

SECTION 5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities shall be the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary shall then distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same

fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~September 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective September 1, 2002, the county must notify the Secretary on or before August 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days" advance notice of the tax levy.

For taxes ~~levied on or~~that are to become effective after January 1, ~~2004~~,2003, the provisions of G.S. 105-466(c) apply."

SECTION 8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 9. Notwithstanding any other provision of law, for the month of September 2002, the administration and distribution of taxes collected under Article 44 of Chapter 105 of the General Statutes shall be in accordance with this section. For that month, the Secretary of Revenue shall create a separate account for the collection of taxes under Article 44 of Chapter 105 of the General Statutes. In that month, retailers shall report taxes collected under Article 44 of Chapter 105 of the General Statutes on a form separate from that on which the retailer reports other sales and use taxes collected. In that month, the Secretary shall allocate to each county that has imposed a tax under Article 44 of Chapter 105 of the General Statutes a portion of the total amount of tax collected under that Article. A county's allocation shall be determined by multiplying the total amount of tax collected under Article 44 of Chapter 105 of the General Statutes for that month by a fraction. The numerator of the fraction is the amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to the county. The denominator of the fraction is the total amount allocated under G.S. 105-472, 105-486, and 105-501 for the first quarter of the 2002-2003 fiscal year to all counties that have imposed a tax under Article 44 of Chapter 105 of the General Statutes. The Secretary shall distribute these taxes at the end of the quarter in accordance with G.S. 105-520(c).

SECTION 10. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five

thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 12.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article shall be known as the "~~Local~~ First One-Cent (1¢) Local Government Sales and Use Tax ~~Act.~~"Act."

SECTION 13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article shall be known as the ~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article shall be known as the ~~Additional Supplemental~~Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 15. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes without giving at least 10 days" public notice of its intent to adopt the resolution and without holding a public hearing on the issue of adopting the resolution.

SECTION 15.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 15.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds

and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

SECTION 16. Except as otherwise provided, this act is effective when it becomes law.

Amendment # 1

(Revised 6-02)

Fails

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		✓
Allen		✓	Weiss		✓
Blust	✓		Willingham		✓
Buchanan	✓		Wilson		
Capps	✓		Womble	✓	✓
Cox		✓			
Decker					
Dedmon		✓			
Eddins	✓				
Edwards		✓			
Gibson		✓			
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill		✓			
Holliman		✓			
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs		✓			
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour		✓
Pope	✓		Majority Whip Earle		✓
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				
				12	20

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ALC-163 [v.1]

Date 7-17-02 ,2002

Comm. Sub. [YES]
Amends Title [~~NO~~] YES
Second Edition

Representative ~~Nesbitt~~ Buchanan

moves to amend the bill on page 1, line 3, by adding the following after the comma:
"TO ACCELERATE THE SUNSET OF THE STATE HALF-CENT SALES TAX,";
on page 4, lines 21 – 22, by adding the following between the lines:

"**SECTION 8.** Section 34.13(c) of S.L. 2001-424 reads as rewritten:

`**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July 1, 2003.~~October 1, 2002. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.' "

SIGNED C. Buchanan
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

Amendment 2

(Revised 6-02) failed

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		✓
Allen		✓	Weiss		✓
Blust	✓		Willingham		✓
Buchanan	✓		Wilson		
Capps	✓		Womble		✓
Cox		✓			
Decker					
Dedmon		✓			
Eddins	✓				
Edwards		✓			
Gibson		✓			
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill		✓			
Holliman		✓			
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs	✓				
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour		✓
Pope	✓		Majority Whip Earle		✓
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				
				13	19

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 1633 DATE 7-17-02

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Starnes
)
Sen.)

moves to amend the bill on page 1, line 3

(✓) WHICH CHANGES THE TITLE

by rewriting the line to read

" OPTION SALES AND USE TAX, TO MAKE OTHER VARIOUS SALES AND USE TAX CHANGES, TO PROVIDE THAT LOCAL REVENUES".

SIGNED Edgar Starnes

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1633:
Accelerate Local Option Sales Tax

BILL ANALYSIS

Committee: House
Date: August 5, 2002
Version: 2nd

Sponsor:
Analysis by: Finance Team

SUMMARY: Sections 1 through 15 of the bill accelerate the 2001 legislation establishing a sales tax swap, as follows:

- **Accelerates the effective date of the local option sales tax from July 1, 2003, to September 1, 2002.**
- **Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.**
- **Provides a hold harmless for local governments for 10 years.**

- **Sections 15.1 through 15.7 of the bill seek to secure local revenues in two ways:**
  - **They prohibit the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.**
  - **They restrict the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized by an act of the General Assembly.**

Local Option Sales Tax. – The proposed committee substitute for House Bill 1633 accelerates many of the provisions enacted last session. Under the bill, counties are authorized to levy an additional half-cent local sales tax effective as early as September 1, 2002. If counties levy the tax, the combined State and local sales tax rate would be 7% from September 2002 until July 1, 2003; at that time the State's half-cent tax sunsets and the combined rate would drop to 6½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax without a public hearing.
- It would allow the counties to enact the tax with only a 15-day notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would modify the local tax distribution formula for the first month (September).

- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Like the existing State sales tax, the new half-cent local sales tax would not apply to food.[1] Unlike the tax authorized last year, this local sales tax could be enacted without a public hearing if the resolution becomes effective on or before January 1, 2003. A county may still choose to submit the question to the voters in a special election held after 30 days' public notice. If a county chooses to submit the question to the voters and the voters reject the tax levy, the county may not enact the tax for at least two years.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. For the tax to become effective September 1, 2002, a county must notify the Secretary of Revenue of the tax's imposition by August 15, 2002. If the tax is to become effective on any other date on or before January 1, 2003, the county must give the Secretary 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are re-instated.

Beginning October 1, 2002, the net proceeds of the tax would be allocated among the counties as provided in the legislation enacted last year: one-half would be allocated on a point-of-origin basis and one-half would be allocated on a per capita basis.[2] However, for the month September 2002, the tax revenues would be placed in a separate account and allocated to the taxing counties in proportion to each county's respective share of the current two-cent distribution for the first quarter of the 2002-03 fiscal year. Each county's allocation would then be divided between the county and the municipalities in the county using the

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[1] The current two-cent local sales tax applies to food.

[2] Per capita distribution of a local tax probably violates the law of the land clause of the North Carolina Constitution, the uniformity requirements of the North Carolina Constitution, or both. The law of the land clause, which is equivalent to the due process clause of the federal constitution, prohibits the levying of a tax on one tax district for the benefit of another tax district. A local option sales tax with per capita distribution is such a tax: it is a county tax, levied by the board of county commissioners, on transactions within the county. The tax proceeds belong to the county; the constitution does not permit the county or the State to use these tax proceeds except for the benefit of the county. Distributing the county's tax proceeds throughout the State based on population violates the due process rights of the county's taxpayers. If the Statewide local option sales tax Article is viewed as a State tax for the benefit of all counties that choose to participate, it violates the uniformity requirement of Section 2 of Article V of the North Carolina Constitution, as interpreted by the North Carolina Supreme Court.

same formula by which the existing local sales taxes are divided in that county.[3] As with the existing local sales taxes, the State's costs of collecting and administering the new tax come from the local tax proceeds.

Local Government Reimbursements. - Last session, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002. State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

Local Government Hold Harmless. - Last session, the General Assembly provided an annual hold-harmless distribution from the State's General Fund to counties and cities to ensure that none of them would lose money when the local government reimbursements repealed were netted against the estimated proceeds of the sales tax if it were levied in each county as of July 1, 2003. This year, the Governor's budget provides for the repeal of the reimbursements but it does not provide for any hold harmless distributions. This bill proposes an acceleration of the same hold harmless provision in last year's legislation with one major exception: the hold harmless payments would end on July 1, 2012.

Under the hold harmless distribution in this bill, a county or city would receive a distribution if the county's or city's estimated proceeds of a half-cent tax would be less than 100% of the amount it would have gotten under the repealed reimbursements. The distribution amount would be the difference between the two. If a county's or city's estimated gain from the half-cent tax equals or exceeds 100% of its repealed reimbursement amount, it does not receive a hold harmless payment from the State. The hold harmless payment is the same whether or not the new tax is levied in the county. The Department of Revenue will make the hold harmless distribution annually, drawing the funds from State sales tax collections. The hold harmless payments must be made by September 15 of each year, beginning in 2002, and ending after the 2011 payment.

Secure Local Revenues. - Sections 15.1 through 15.7 of the bill have already passed the House as House Bill 1490. Sections 15.1 through 15.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as

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[3] The sales tax revenues are distributed between a county and its municipalities on either a per capita basis or an ad valorem basis. The county decides which distribution method it will use. The method may be changed each year.

distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

Section 15.1 - Beer and wine tax.

Section 15.2 - Franchise gross receipts tax.

Section 15.3 - Piped natural gas tax.

Section 15.4 - Sales tax on telecommunications.

Section 15.5 - Powell Bill funds.

Section 15.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, these sections would expressly state that the Governor may not reduce or withhold these distributions.

Section 15.7 amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1633-ARB-140 [v.2]

Date JUL 17 2002 ,2002

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative

moves to amend the bill on page on page 4, line 21, by inserting a new section immediately after that line to read:

"**SECTION 8.1.** Notwithstanding any other provision of law, a retailer is not liable for the additional one-half percent (½%) tax levied by counties on September 1, 2002, that it fails to collect from purchasers due to an inadvertent error during the month of September 2002, if the retailer can demonstrate to the Secretary the reason for the inadvertent error. An example of an inadvertent error is a delay in reprogramming point-of-sale equipment."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 111-1 EV FAILED _____ TABLED _____

JUL 17 2002

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1633

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

H1633-ARB-138 [v.1]

Date JUL 17 2002 ,2002

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative

moves to amend the bill on page 5, lines 33 through 37, by rewriting those lines to read:

"**SECTION 15.** Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes by giving at least 48 hours notice of its intent to adopt the resolution, as provided under G.S. 143-318.12(b)(2)."

SIGNED Connie Wilson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 114-2 EV FAILED _____ TABLED _____

JUL 17 2002
Denise Weeks

MINUTES
HOUSE COMMITTEE ON FINANCE

July 18, 2002

The House Committee on Finance met on Thursday, July 18, 2002, at 12:00 P.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Martha Alexander, John Blust, Leslie Cox, Pete Cunningham, Michael Decker, Andrew Dedmon, Beverly Earle, Zeno Edwards, Pryor Gibson, Lyons Gray, Joe Hackney, Hugh Holliman, Bill Hurley, Linda Johnson, Daniel McComas, Eugene McCombs, Edwin McMahan, Mia Morris, Art Pope, John Rayfield, Edgar Starnes, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble. Staff members present were Cindy Avrette, Trina Griffin, Martha Walston, Richard Bostic, and Canaan Huie. A Visitor Registration Sheet is attached and made a part of these minutes.

House Bill 1670, AN ACT TO ESTABLISH, SET, OR MODIFY VARIOUS FEES, was before the committee for consideration.

Rep. Cunningham moved to adopt the proposed committee substitute for discussion. Vote was taken and motion passed with a voice vote.

Rep. Redwine, House Appropriations Chairman, appeared before the committee to speak to the bill. He explained that the 2002 Fee Bill is a bill that normally appears before the committee in one form or another as a normal course of business and provided a brief overview of the genesis of the bill. He indicated that the budget staff would brief committee members on the various fees that are being proposed and reasons for the increases.

Chairman Luebke recognized staff as follows to explain various parts of the bill:

PART I – JUSTICE AND PUBLIC SAFETY FEES – Elisa Wolper, Justice and Public Safety Team, Fiscal Research Division, explained the increase in fees and the expected revenue related to offenders under the supervision of the Department of Correction, fees paid by offenders sentenced to the Community Service Work Program, probation supervision fees, fees related to court costs, General Court of Justice fees, fees covering the costs of processing expunctions, increase in program fees for the worthless check program, SBI laboratory analysis fees, fees for terminals and circuits within the Police Information Network, appointment fees in the Office of Indigent Defense Services, Justice Academy lodging fees and miscellaneous fees charged by magistrates.

She further explained that Section 1.8 provides for an exemption to court costs for domestic violence cases.

PART II – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FEES– Adam Levinson, Natural and Economic Resources Team, Fiscal Research Division, explained the increase in fees and expected revenue relating to hazardous waste facilities, fees to monitor food and lodging facilities, two new fees charged by DENR for plan review of franchise or chain facilities for food establishments and a fee that local health departments may charge for plan review of local "mom and pop" type food establishments, and the Division of Parks and Recreation's increase in the car entry fee at Falls and Jordan Lakes.

PART III – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES FEES – Kelly Huffstetler, Natural and Economic Resources Team, Fiscal Research Division, explained the increase in fees and expected revenues for the licensure of pet shops, public auctions, boarding kennels, recording of livestock brands, public livestock market permits, a new fee for livestock dealers, fee for poultry ratite dealer license, increase of animal disease diagnostic tests, weights and measures fees, increase of wholesale and retail dairy establishment inspection fees, increase of the annual registration fee for commercial canned pet food, increase of license fees for pesticide dealers, applicators and consultants, increase of pesticide aircraft inspection fee, increase of license and inspection fees paid by seed dealers and the increase of fees for soil testing.

PART IV – DEPARTMENT OF HEALTH AND HUMAN SERVICES FEES – Jim Klingler, Health and Human Services Team, Fiscal Research Division, explained the Health and Human Services fees and expected revenues. There are two fees associated with the Division of Public Health, one for vital records copies or search and another for newborn metabolic life-threatening screening tests.

PART V – SECRETARY OF STATE FEES – Marilyn Chism, General Government/Information Technology, Fiscal Research Division, explained the increase in fees and expected revenue for notarial commissions, the raising of fees for various securities registrations, various filing and copying fees, increase of lobbyists' registration fees, the increase of broker-dealer registration fees, securities salesmen's fees, investment advisor representative fees, increase in costs of registering trademarks or service marks, and the increase in costs for a notice filing of the offer of securities for an investment company.

Following the explanation by staff of the various fees as set forth in the bill, Rep. Redwine opened the floor for questions from committee members.

John Kennedy, Administrative Office of the Courts, addressed Rep. Pope's concerns on the issue of court costs, stating that all infractions carry court costs except for a few obscure infractions.

Rep. Pope also questioned if agencies were consulted and if any agency objected to the fees or think it will cause a hardship on the community or people they serve. Rep. Redwine assured him that a vast majority of these fees were proposed by departments in one form or the other with the subcommittees and the budget staff working with them and that overwhelmingly, they are not objectionable.

Rep. Edwards raised questions about a remittance to the N. C. State Bar and what services the Bar provided for that remittance, expunctions for felons, and the Police Academy fee.

Rep. Decker asked about fees in the general government areas (cultural/historical areas) not being touched.

Rep. Womble asked about the guidelines or rationale that was used in the setting of fees and how the October 1 effective date was set.

Rep. Weiss wished to know if increased fees for DNA testing would address the backlog of rape kit tests.

T. Jerry Williams, N. C. Restaurant Association, spoke to Rep. Earle's concerns about reciprocity between the State and local government for franchise or chain facilities' plan reviews.

Rep. McComas indicated that he has had problems with the Department of Environment regarding the processing of CAMA permits and asked Rep. Redwine if he would be amenable to an amendment that would allow the Department to get additional funding and instead of it going to the general fund, it could be designated receipt supported. Rep. Redwine declined to accept an amendment of this nature at this time.

Rep. Willingham had concerns that some fees do not cover costs and wanted to make sure that they do cover costs.

Rep. Weiss sent forth a technical amendment. Trina Griffin reported that the amendment concerns compliance with the Violence Against Women Act which requires that in order to continue receiving certain grant monies, that we not charge court costs or service fees associated with obtaining protective orders for victims of domestic violence. Rep. Weiss moved for adoption of the amendment.

Rep. Wainwright offered a perfecting amendment to Rep. Weiss's amendment which was voted on and passed.

The Weiss amendment was adopted as perfected.

Rep. Johnson explained that in the University system, that they re-bill for their charges and asked why the Hazardous Waste Facility Fees could not be billed in this

budget year. Levinson said this was the course of action that was recommended and said he did not know of any reason why a second bill could not be sent. Rep. Redwine said that the bills had already been sent out and rather than to bill them in October when the rest of this bill is effective, they would not.

Rep. Buchanan moved that the amendment be rolled into a Committee Substitute and that the bill be given a favorable report as to committee substitute, unfavorable as to original bill. The bill passed by voice vote.

There being no further business, the Chair adjourned the meeting at 1:45 P.M.

Respectfully submitted,

Paul Luebke

Representative Paul Luebke
Presiding Chair

Joyce T. Harris

Joyce T. Harris
Committee Assistant

ATTACHMENTS:

Visitor Registration Sheets
Committee Report
Proposed Committee Substitute
Amendment
Original Bill
Bill Analysis
Fiscal Note

VISITOR REGISTRATION SHEET

Finance — 7/18/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Evelyn Hawthorne	DHA
Chad Essick	Edmisten & Webb
Katherine Miller	NCASA
Ashley Shuffstall	The Capitol Group
Amanda Kelley	Jordan Price
Sarah Schmidt	NC Justice Center
Roz Savitt	NC Child Care Coalition
Pat Young	CCHILC/GS
Susan Valaani	Nationwide

VISITOR REGISTRATION SHEET

Finance — 2/18/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCRA
Laura Harper	SEANC
Ardis Watkins	"
Patty Rogers	NC Vital Records
Rick Tucker	N.C. Vital Records
Vicki Pearce	NC Vital Records
Steve Hoffman	NCSBA
Alice Garland	EC
Stacy Flannery	NCHCFA
Shayna Wades	intern
Lad Rubert	CJAC

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1670 A BILL TO BE ENTITLED AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEE, TO SET THE ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE, AND TO SET THE INSURANCE REGULATORY CHARGE.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1670
PROPOSED COMMITTEE SUBSTITUTE H1670-PCS4265-LYf-45

Short Title: 2002 Fee Bill. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH, SET, OR MODIFY VARIOUS FEES.

The General Assembly of North Carolina enacts:

PART I. JUSTICE AND PUBLIC SAFETY FEES

SECTION 1.1.(a) G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows ~~him~~ the person additional time to pay the fee. The parolee may not be required to pay the fee before ~~he~~ the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that ~~he~~ the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this ~~section~~ subsection may be paid as prescribed by the supervising parole officer."

SECTION 1.1.(b) G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

SECTION 1.1.(c) G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all

persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which ~~he~~ the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before ~~he begins his~~ the person may participate in the community ~~service,~~ service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before ~~he~~ the person pays the fee by the court in which ~~he~~ the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin ~~his~~ community service before the fee is paid by the official or agency representing the State in the agreement.

~~Fees collected pursuant to this subsection shall be deposited in the General Fund.~~"

SECTION 1.1.(d) This section becomes effective October 1, 2002, and applies to fees assessed or collected on or after that date.

SECTION 1.2.(a) G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 1.2.(b) G.S. 15A-1368.4(f) reads as rewritten:

"(f) Required Supervision Fee. – The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

SECTION 1.2.(c) G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

SECTION 1.2.(d) This section becomes effective October 1, 2002, and applies to supervision fees assessed or collected on or after that date.

SECTION 1.3. Reserved.

SECTION 1.4.(a) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. ~~A~~ For a person found responsible for a violation of this ~~section may not be assessed court costs.~~section, the only court costs assessed shall be the General Court of Justice fee imposed under G.S. 7A-304(a)(4)."

SECTION 1.4.(b) This section becomes effective September 1, 2002, and applies to offenses committed on or after that date.

SECTION 1.5.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~sixty-five dollars ($65.00)~~ seventy-five dollars ($75.00) in the district court, including cases before a magistrate, and the sum of ~~seventy-two dollars ($72.00)~~ eighty-two dollars ($82.00) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...."

SECTION 1.5.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of ~~fifty-nine dollars ($59.00)~~ sixty-nine dollars ($69.00) in the superior court, and the sum of ~~forty-four dollars ($44.00)~~ fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum

shall be ~~thirty-three dollars ($33.00).~~ forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 1.5.(c) This section becomes effective September 1, 2002, and applies to offenses committed and civil cases filed on or after that date.

SECTION 1.6.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The cost of expunging such records shall be taxed against the petitioner.~~"

SECTION 1.6.(b) G.S. 15A-145 is amended by adding a new subsection to read:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(c) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The costs of expunging such records shall be taxed against the petitioner.~~"

SECTION 1.6.(d) G.S. 15A-146 is amended by adding a new subsection to read:

"(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(e) G.S. 90-96 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the

time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(f) This section becomes effective October 1, 2002, and applies to petitions filed on or after that date.

SECTION 1.7. Reserved.

SECTION 1.8.(a) G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. – A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served.

(c) Ex Parte Orders. – Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the

aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served.

(c1) Ex Parte Orders by Authorized Magistrate. – The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody to pursuant subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 1.8.(b) G.S. 50B-3(a) reads as rewritten:

"(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

...

(10) Award ~~costs and~~ attorney's fees to either party;

..."

SECTION 1.8.(c) G.S. 50B-4 reads as rewritten:

"(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. This party may file and proceed with that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served."

SECTION 1.8.(d) G.S. 1-110(a)(6) is repealed.

SECTION 1.8.(e) G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district ~~court~~court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-nine dollars ($59.00) in the superior court, and the sum of forty-four dollars ($44.00) in the district court except that if the case is assigned to a magistrate the sum shall be thirty-three dollars ($33.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 1.8.(f) G.S. 7A-311(a) reads as rewritten:

"(a) In a civil action or special proceeding, except for actions brought under Chapter 50B of the General Statutes, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. For each item of civil process served, including summons, subpoenas, notices, motions, orders, writs and pleadings, the sum of five dollars ($5.00). When two or more items of civil process are served simultaneously on one party, only one five dollar ($5.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors."

SECTION 1.8.(g) G.S. 7A-311(b) reads as rewritten:

"(b) All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected in advance (except in suits in forma pauperis) except those contingent on expenses or sales prices. When the fee is not collected in advance or at the time of assessment, a lien shall exist in favor of the county on all property of the party owing the fee. If the fee remains unpaid it shall be entered as a judgment against the debtor and shall be docketed in the judgment docket in the office of the clerk of superior court."

SECTION 1.8.(h) This section becomes effective October 1, 2002.

SECTION 1.9.(a) G.S. 7A-308(c) reads as rewritten:

"(c) A person who participates in a program for the collection of worthless checks under G.S. 14-107.2 must pay a fee of ~~fifty dollars ($50.00).~~ sixty dollars ($60.00). The fee collected under this subsection must be remitted to the State by the clerk of the court in the county in which the program is established and credited to the Collection of Worthless Checks Fund. The Collection of Worthless Checks Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of the fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The money in the Fund is subject to appropriation by the General Assembly and may be used solely for the expenses of the programs established under G.S. 14-107.2 for the collection of worthless ~~checks.~~ checks, including personnel, equipment, and other costs of district attorneys' offices that are attributable to the provision of these programs."

SECTION 1.9.(b) This section becomes effective October 1, 2002.

SECTION 1.10.(a) G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as

part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 1.10.(b) G.S. 90-95.3(b) is repealed.

SECTION 1.10.(c) Subsection (a) of this section becomes effective October 1, 2002, and applies to court costs assessed or paid on or after that date. Subsection (b) of this section becomes effective October 1, 2002, but the provisions of G.S. 90-95.3(b) continue to apply to any defendant who was ordered to make restitution under the provisions of that subsection prior to October 1, 2002.

SECTION 1.11.(a) G.S. 114-10.1(c) reads as rewritten:

"(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, ~~and~~ who shall have access to ~~such information~~ that information, and fees for access to that information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history."

SECTION 1.11.(b) The Division of Criminal Information shall charge the following monthly fees for the Police Information Network for the 2002-2003 fiscal year:

(1) Circuit fee: $67.00.

(2) Terminal fee: $29.50.

SECTION 1.11.(c) This section becomes effective January 1, 2003.

SECTION 1.12.(a) Article 36 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person who requests the appointment of counsel in a criminal case shall pay to the clerk of court a nonrefundable appointment fee of fifty dollars ($50.00) at the time of appointment. Partial payments shall be credited against the amount of the fifty-dollar ($50.00) fee due. No fee shall be due if the court finds that the person is not entitled to the appointment of counsel.

(b) The appointment fee in this section is due regardless of the outcome of the proceedings. If paid before the final determination of the action at the trial level, the amount of the fee paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid before the

final determination of the action at the trial level, the unpaid amount of the fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorney's fees are collected for such representation. If no attorney's fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of the unpaid fee and shall constitute a lien as prescribed by the general law of the State applicable to judgments.

(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each affidavit of indigency submitted by a defendant or other determination of indigency by the court, regardless of the number of cases for which an attorney is appointed. An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an additional appointment fee be assessed if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 1.12.(b) G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's ~~fees.~~ fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

SECTION 1.12.(c) This section becomes effective October 1, 2002.

SECTION 1.13.(a) The Department of Justice shall charge a fee of ten dollars ($10 00) per night to those persons who lodge in the dormitories at the North Carolina Justice Academy. This fee shall apply to both the Salemburg and the Edneyville locations of the Academy.

SECTION 1.13.(b) This section becomes effective October 1, 2002.

SECTION 1.14.(a) G.S. 7A-309 reads as rewritten:

"**§ 7A-309. Magistrate's special fees.**

The following special fees shall be collected by the magistrate and remitted to the clerk of superior court for the use of the State in support of the General Court of Justice:

(1) Performing marriage ceremony ..... ~~$10.00~~$20.00

(2) Hearing petition for year's allowance to surviving spouse or child, issuing notices to commissioners, allotting the same, and making return ..... ~~4.00~~8.00

(3) Taking a deposition ..... ~~5.00~~10.00

(4) Proof of execution or acknowledgment of any instrument ..... ~~1.00~~2.00

(5) Performing any other statutory function not incident to a civil or criminal action ..... ~~1.00~~2.00"

SECTION 1.14.(b) This section becomes effective October 1, 2002.

PART II. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FEES

SECTION 2.1. G.S. 130A-294.1(e) reads as rewritten:

"(e) A person who generates either one kilogram or more of any acute hazardous waste as listed in 40 C.F.R. § 261.30(d) or § 261.33(e) as revised 1 July 1987, or 1000 kilograms or more of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June shall pay an annual fee of ~~five hundred dollars ($500.00)~~seven hundred fifty dollars ($750.00)."

SECTION 2.2. G.S. 130A-294.1(f) reads as rewritten:

"(f) A person who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of ~~twenty-five dollars ($25.00)~~thirty-seven dollars and fifty cents ($37.50)."

SECTION 2.3.(a) G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of ~~twenty-five dollars ($25.00)~~fifty dollars ($50.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any

establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third percent (33-1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 2.3.(b) The Legislative Research Commission may study the current program within the Department of Environment and Natural Resources regarding the regulation of food and lodging facilities to determine whether the annual fee paid by establishments under G.S. 130A-248(d), as amended by subsection (a) of this section, is sufficient for the State and local food, lodging, and institution sanitation programs and activities. The Legislative Research Commission shall report no later than the convening of the 2004 Regular Session of the 2003 General Assembly. This report shall include a recommendation as to whether the annual fee paid by establishments should remain at fifty dollars ($50.00) or should be changed, and if so, to what amount it should be changed in order to improve the State and local food, lodging, and institution sanitation programs and activities. This report shall include any legislative proposals needed to accomplish the Commission's recommendations.

SECTION 2.4. G.S. 130A-248 is amended by adding two new subsections to read:

"(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of two hundred dollars ($200.00) for plan review by the Department of plans for franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part.

(f) Any local health department may charge a fee not to exceed two hundred dollars ($200.00) for plan review by that local health department of plans for food establishments subject to this section that are not plans for franchised or chain facilities. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities."

SECTION 2.5. The Department of Environment and Natural Resources shall adopt temporary rules to increase the entry fee for use of State recreation areas at Jordan Lake and at Falls Lake from four dollars ($4.00) per vehicle to five dollars ($5.00) per vehicle. This section is not intended to preempt the Department's authority under G.S. 113-35 to charge and collect reasonable fees in the future for the use of State lakes. The fee increases under this section shall remain in effect until the Department subsequently adopts rules under G.S. 113-35 to change these fees other than the rules that are adopted to implement this section.

SECTION 2.6. Except as otherwise provided, this part becomes effective October 1, 2002.

PART III. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES FEES

SECTION 3.1. G.S. 19A-27 reads as rewritten:

"**§ 19A-27. License required for operation of pet shop.**

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 3.2. G.S. 19A-28 reads as rewritten:

"**§ 19A-28. License required for public auction or boarding kennel.**

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 3.3. G.S. 19A-29 reads as rewritten:

"**§ 19A-29. License required for dealer.**

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof, beginning with the first day of the fiscal year."

SECTION 3.4. G.S. 80-62 reads as rewritten:

"**§ 80-62. Fees for recording.**

The Commissioner is authorized to collect a fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) for the recording of each new brand, or for rerecording of each brand, and shall issue one certified copy of each brand recording to the holder of said brand. Duplicate certificates of registration may be issued by the Commissioner upon payment of a fee of two dollars ($2.00). Revenues collected pursuant to this Article shall be deposited with the State Treasurer to the account of the North Carolina Department of Agriculture and Consumer Services."

SECTION 3.5.(a) G.S. 81A-11 is repealed.

SECTION 3.5.(b) Chapter 81A of the General Statutes is amended by adding a new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following fees apply to all weights that are tested and certified to meet tolerances less stringent than American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three--fourths of the applicable tolerance, adjustment may be required at an additional fee of one--half the normal fee. No extra fee will be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00

11-100 lb	$ 7.50	6-50 kg	$ 7.50
101-1000 lb	$ 15.00	51-500 kg	$ 15.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00
Weight Carts			
3000 to 6000 lb	$100.00		

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or International Organization of Legal Metrology (OIML) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00
11-100 lb	$ 15.00	6-50 kg	$ 15.00
101-1000 lb	$ 30.00	51-500 kg	$ 30.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$100.00	1001-2500 kg	$100.00

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or OIML Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Tolerance testing fees shall be assessed on weights that can only be adjusted to a lower tolerance or are rejected for any reason.

Customary	Fee/Unit	Metric	Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-450 kg	$ 70.00
1001-2500 lb	$130.00	451-1000 kg	$130.00
2501-6000 lb	$200.00	1001-2500 kg	$200.00

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory will be assigned to the mass values of the weights. No adjustments will be made.

Weight Range	Fee/Unit or Series	Minimum Charge
0 – 1 kg	$30.00 each	$90.00 (3 weights) per series
2 – 30 kg	$50.00 each	$150.00 (3 weights) per series
0 – 2 lb	$30.00 each	$90.00 (3 weights) per series
3 – 50 lb	$50.00 each	$150.00 (3 weights) per series

(e) The following fees apply to volumetric flasks, graduates, or test measures.

Customary	Fee/Test Point	Metric	Fee/Test Point
0 – 5 gal	$ 30.00	0 – 20 liters	$ 30.00

Over 4 gal	Add $0.40 per each additional gallon	Over 20 liters	Add $0.10 per each additional liter

(f) The following fees apply to tape measures and rigid rules.

Set Up Fee	$ 40.00 per instrument
Calibration	$ 10.00 calibration point

(g) The following fees apply to liquid-in-glass and electronic thermometers.

Set Up Fee	$ 40.00 per instrument
Calibration	$ 20.00 per calibration point

(h) Any special tests or weight cleaning shall be billed at the rate of $50.00 per hour prorated to the nearest tenth of an hour, with a minimum charge of $25.00.

(i) A minimum charge of $25.00 per invoice will apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

SECTION 3.6. G.S. 106-254 reads as rewritten:

"**§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.**

For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of ~~forty dollars ($40.00).~~ sixty dollars ($60.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) each year. The inspection fee ~~of ten dollars ($10.00)~~ shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis."

SECTION 3.7. G.S. 106-277.28 reads as rewritten:

"**§ 106-277.28. License and inspection fees.**

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

(1) Repealed by Session Laws 1991, c. 588, s. 1.

(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:

a. Wholesale or combined wholesale

and retail seed dealer ..... ~~$100.00~~
..... $145.00

b. Retail seed dealer with sales of no more than $500.00 ..... ~~5.00~~
..... 10.00

c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 ..... ~~15.00~~
..... 25.00

d. Retail seed dealer with sales of more than $1,000 ..... ~~25.00.~~
..... 40.00.

(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due."

SECTION 3.8.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~ five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ten dollars ($10.00) for each canned pet food shall accompany each request for registration."

SECTION 3.8.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears on the label of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

...

(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) shall be paid in lieu of the inspection fee specified above."

SECTION 3.9. G.S. 106-406 reads as rewritten:

"**§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.**

Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of ~~two hundred fifty dollars ($250.00),~~ three hundred fifty dollars ($350.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied. There shall be an annual renewal fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) for each year of operation thereafter.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall issue a license or fix the date of a hearing on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant

shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the members of the Public Livestock Market Advisory Board of the time and place of said hearing, at least 10 days before the date on which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall recommend to the Commissioner that a permit be issued to the applicant. If the Commissioner denies the application, the applicant may commence a contested case under G.S. 150B-23 by filing a petition within 10 days after receiving notice of the denial. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee."

SECTION 3.10. G.S. 106-418.11(a) reads as rewritten:

"(a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. ~~Such~~ The application shall contain the address, both business and personal, of the ~~applicant.~~ applicant, and must be accompanied by a nonrefundable fee of fifty dollars ($50.00). No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture and Consumer Services, which form shall require only the name and current address of the licensee. ~~No~~ A renewal fee of fifty dollars ($50.00) shall be charged."

SECTION 3.11.(a) G.S. 106-542(b1) reads as rewritten:

"(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first ~~registering with~~ obtaining an annual license from the Department of Agriculture and Consumer ~~Services.~~Services, for a fee of twenty dollars ($20.00) a year."

SECTION 3.11.(b) This section becomes effective January 1, 2003.

SECTION 3.12. G.S. 143-442(b) reads as rewritten:

"(b) The applicant shall pay an annual registration fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars ($50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars ($5,000.00) and twenty-five dollars ($25.00) if gross sales were less than five thousand dollars ($5,000.00). An additional two hundred dollars ($200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and additional assessment for each

year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that registration is canceled by the Board or by the United States Environmental Protection Agency."

SECTION 3.13. G.S. 143-448 reads as rewritten:

"**§ 143-448. Licensing of pesticide dealers; fees.**

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~thirty dollars ($30.00).~~ forty-five dollars ($45.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) Repealed by Session Laws 1981, c. 592, s. 6.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended."

SECTION 3.14. G.S. 143-452(b) reads as rewritten:

"(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) for each pesticide applicator's license. In addition, an annual inspection fee of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional ~~ten dollar ($10.00)~~ fifteen dollar ($15.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such

equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made."

SECTION 3.15. G.S. 143-455(a) reads as rewritten:

"(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by a non-refundable annual fee of ~~thirty dollars ($30.00).~~forty-five dollars ($45.00)."

SECTION 3.16. The Board of Agriculture shall charge the following fees for agronomic services:

(1)	Nematode assays for nonresidents	$10.00
(2)	Plant tissue and solution sample analysis for nonresidents	$15.00
(3)	Waste sample analysis for nonresidents	$25.00
(4)	Nematode species identification/soybean cyst nematode race identification	$20.00
(5)	Waste N breakout	$15.00
(6)	Waste heavy metals	$25.00
(7)	Heavy metal analysis in soils	$25.00
(8)	Nematode assay in-state research	$10.00
(9)	Plant/Waste/Solution in-state research	$20.00
(10)	Routine analysis of in-State research soil samples	$ 5.00
(11)	Routine analysis soil samples non-farmers	$ 5.00
(12)	Routine analysis soil sample farmers	$ 2.00

SECTION 3.17. The Board of Agriculture shall charge the following fees for animal disease diagnostic tests or services:

	Test/Service	Fee
(1)	Pullorum	$0.10
(2)	M Synoviae	0.50
(3)	EIA	5.00
(4)	M. meleagridis	0.50
(5)	Necropsy	25.00
(6)	M Gallisep	0.50
(7)	Mg,Ms,Mm-HI	1.25
(8)	Histopathology	25.00
(9)	Cytology	10.00
(10)	Necropsy Disposal	
	10 to 100 pounds	5.00
	100 to 500 pounds	15.00
	More than 500 pounds	30.00
(11)	Health Certificates	8.00
(12)	Equine Health Certificates	10.00

SECTION 3.18. Except as otherwise provided, this part becomes effective October 1, 2002.

PART IV. DEPARTMENT OF HEALTH AND HUMAN SERVICES FEES

SECTION 4.1.(a) G.S. 130A-93.1 reads as rewritten:

§ 130A-93.1. Fees for vital records copies or search; automation fund.

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed ~~ten dollars ($10.00)~~fifteen dollars ($15.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section."

SECTION 4.1.(b) G.S. 130A-118(d) reads as rewritten:

"(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed ~~seven dollars and fifty cents ($7.50)~~fifteen dollars ($15.00) to be paid by the applicant."

SECTION 4.2. The Department of Health and Human Services shall charge a fee in the amount of ten dollars ($10.00) for a laboratory test performed by the State Public Health Laboratory under the Newborn Screening Program pursuant to G.S. 130A-125. If the actual cost to perform the test exceeds the amount of the fee authorized under this section, then the Department may increase the fee in accordance with its authority under G.S. 130A-125(c) to cover the cost.

SECTION 4.3. Except as otherwise provided, this part becomes effective October 1, 2002.

PART V. SECRETARY OF STATE FEES

SECTION 5.1 G.S. 10A-4(b)(6) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

(6) Pay a nonrefundable fee of ~~thirty dollars ($30.00).~~fifty dollars ($50.00)."

SECTION 5.2. G.S. 78A-17(9) reads as rewritten:

"(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security ~~transaction and establish~~transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing ~~required, not to exceed one hundred fifty dollars ($150.00).~~required."

SECTION 5.3. G.S. 78A-17(17) reads as rewritten:

"(17) Any transaction that is exempt pursuant to rules established by the Administrator creating limited offering transactional exemptions that are consistent with the objectives of compatibility with federal limited offering exemptions and uniformity among the states. ~~The Administrator may establish~~ There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required by such ~~rules, not to exceed one hundred fifty dollars ($150.00).~~rules."

SECTION 5.4. G.S. 78A-31(b) reads as rewritten:

"(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. ~~The Administrator may, by rule, establish~~ There is established a fee of one hundred fifty dollars ($150.00) to recover costs for filing required by this ~~section, not to exceed one hundred fifty dollars ($150.00).~~section."

SECTION 5.5. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$125.00
(2)	Application for reserved name	~~10.00~~ 30.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00

(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00
(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	~~50.00~~75.00
(21)	Application for certificate of withdrawal	~~10.00~~25.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization (paper)	~~5.00~~ 15.00
(25a)	Application for certificate of existence or authorization (electronic)	10.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 6(b)."	

SECTION 5.6. G.S. 55-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.7. G.S. 55A-1-22(a)(26) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

...

(26)	Application for certificate of existence or authorization (paper)	~~$5.00~~ $15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00"

SECTION 5.8. G.S. 55A-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.9. G.S. 57C-1-22(a)(24) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

...

(24) Application for certificate of existence or authorization (paper) ~~5.00~~ 15.00

(24a) Application for certificate of existence or authorization (electronic) 10.00"

SECTION 5.10. G.S. 57C-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.11. G.S. 59-1106(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

SECTION 5.12. G.S. 147-37 reads as rewritten:

"**§ 147-37. Secretary of State; fees to be collected.**

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his ~~office.~~office, except that if two or more

certificates for foreign adoption are requested concurrently, the fee for the second and subsequent certificates is five dollars ($5.00)."

SECTION 5.13. G.S. 120-47.3 reads as rewritten:

"**§ 120-47.3. Registration fee.**

Every lobbyist's principal shall pay to the Secretary of State a fee of ~~seventy-five dollars ($75.00) which fee shall be~~two hundred dollars ($200.00) that is due and payable by either the lobbyist or the lobbyist's principal at the time of registration.

A separate registration, together with a separate registration fee of ~~seventy-five dollars ($75.00), shall be~~two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a lobbyist. Fees so collected shall be deposited in the General Fund of the State."

SECTION 5.14. G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two hundred dollars ($200.00)~~three hundred dollars ($300.00) in the case of a dealer and ~~fifty-five dollars ($55.00)~~seventy-five dollars ($75.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year."

SECTION 5.15. G.S. 78C-17(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and ~~forty-five dollars ($45.00)~~seventy-five dollars ($75.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

SECTION 5.16. G.S. 80-3(b) reads as rewritten:

"(b) The application shall be signed and verified by the applicant, by a partner, by a member of the firm, or an officer of the corporation or association applying for registration. In states in which a notary is not required by law to obtain a notary's stamp or seal, an original certificate of authority of the notary issued by the appropriate State agency shall be submitted with the application. If the application is signed by a person acting pursuant to a power of attorney from the applicant, an original power of attorney or a certified copy of the power of attorney shall accompany the application.

The application shall be accompanied by three specimens of the mark as currently used and by a filing fee of ~~fifty dollars ($50.00),~~seventy-five dollars ($75.00), payable to the Secretary."

SECTION 5.17. G.S. 78A-31(a)(4) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

...

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by

payment of a renewal fee of ~~one~~ two hundred dollars ~~($100.00)~~($200.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period."

SECTION 5.18. Except as otherwise provided, this part becomes effective October 1, 2002.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective October 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1670

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

H1670-ASVf-95 [v.3]

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative Weiss

moves to amend the bill on page 7, line 14, by rewriting the line to read:

"**SECTION 1.8(e).** G.S. 7A-305(a) reads as rewritten:

'(a) In every civil action in the superior or district ~~court~~ court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of fifty-nine dollars ($59.00) in the superior court, and the sum of forty-four dollars ($44.00) in the district court except that if the case is assigned to a magistrate the sum shall be thirty-three dollars ($33.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the

North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

SECTION 1.8(f). G.S. 7A-311(a) reads as rewritten:

'(a) In a civil action or special ~~proceeding,~~ except for actions brought under Chapter 50B of the General Statutes, the following fees and commissions shall be assessed, collected, and remitted to the county:

(1) a. For each item of civil process served, including summons, subpoenas, notices, motions, orders, writs and pleadings, the sum of five dollars ($5.00). When two or more items of civil process are served simultaneously on one party, only one five dollar ($5.00) fee shall be charged.

b. When an item of civil process is served on two or more persons or organizations, a separate service charge shall be made for each person or organization. If the process is served, or attempted to be served, by a city policeman, the fee shall be remitted to the city rather than the county. If the process is served, or attempted to be served by the sheriff, the fee shall be remitted to the county. This subsection shall not apply to service of summons to jurors.

SECTION 1.8(g). G.S. 7A-311(b) reads as rewritten:

'(b) All fees that are required to be assessed, collected, and remitted under subsection (a) of this section shall be collected in advance (except in suits in forma pauperis) except those contingent on expenses or sales prices. When the fee is not collected in advance or at the time of assessment, a lien shall exist in favor of the county on all property of the party owing the fee. If the fee remains unpaid it shall be entered as a judgment against the debtor and shall be docketed in the judgment docket in the office of the clerk of superior court.

SECTION 1.8(h). This section becomes effective October 1, 2002.'".

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1670

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

H1670-ASVf-95 [v.3]

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1670
PROPOSED COMMITTEE SUBSTITUTE H1670-PCS4263-LYf-43

Short Title: 2002 Fee Bill. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH, SET, OR MODIFY VARIOUS FEES.

The General Assembly of North Carolina enacts:

PART I. JUSTICE AND PUBLIC SAFETY FEES

SECTION 1.1.(a) G.S. 15A-1371(i) reads as rewritten:

"(i) A fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all persons who participate in the Community Service Parole Program. That fee must be paid to the clerk of court in the county in which the parolee is released. The fee must be paid in full within two weeks unless the Post-Release Supervision and Parole Commission, upon a showing of hardship by the person, allows ~~him~~ the person additional time to pay the fee. The parolee may not be required to pay the fee before ~~he~~ the person begins the community service unless the Post-Release Supervision and Parole Commission specifically orders that ~~he~~ the person do so. Fees collected under this subsection shall be deposited in the General Fund. The fee imposed under this ~~section~~ subsection may be paid as prescribed by the supervising parole officer."

SECTION 1.1.(b) G.S. 20-179.4(c) reads as rewritten:

"(c) A fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all persons serving a community service sentence. That fee shall be paid to the clerk of court in the county in which the person is convicted. The fee shall be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows additional time to pay the fee. The person may not be required to pay the fee before beginning the community service unless the court specifically orders the person to do so."

SECTION 1.1.(c) G.S. 143B-262.4(b) reads as rewritten:

"(b) Unless a fee is assessed pursuant to G.S. 20-179.4 or G.S. 15A-1371(i), a fee of ~~one hundred dollars ($100.00)~~ two hundred dollars ($200.00) shall be paid by all

persons who participate in the program or receive services from the program staff. Fees collected pursuant to this subsection shall be deposited in the General Fund. If the person is convicted in a court in this State, the fee shall be paid to the clerk of court in the county in which ~~he~~ the person is convicted. If the person is participating in the program as a result of a deferred prosecution or similar program, the fee shall be paid to the clerk of court in the county in which the agreement is filed. Persons participating in the program for any other reason shall pay the fee to the clerk of court in the county in which the services are provided by the program staff. The fee shall be paid in full within two weeks from the date the person is ordered to perform the community service, and before ~~he begins his~~ the person may participate in the community ~~service,~~ service program, except that:

(1) A person convicted in a court in this State may be given an extension of time or allowed to begin the community service before ~~he~~ the person pays the fee by the court in which ~~he~~ the person is convicted; or

(2) A person performing community service pursuant to a deferred prosecution or similar agreement may be given an extension of time or allowed to begin ~~his~~ community service before the fee is paid by the official or agency representing the State in the agreement.

~~Fees collected pursuant to this subsection shall be deposited in the General Fund.~~"

SECTION 1.1.(d) This section becomes effective October 1, 2002, and applies to fees assessed or collected on or after that date.

SECTION 1.2.(a) G.S. 15A-1343(c1) reads as rewritten:

"(c1) Supervision Fee. – Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund."

SECTION 1.2.(b) G.S. 15A-1368.4(f) reads as rewritten:

"(f) Required Supervision Fee. – The Commission shall require as a condition of post-release supervision that the supervisee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a supervisee from this condition only if it finds that requiring payment of the fee is an undue economic burden. The fee shall be paid to the clerk of superior court of the county in which the supervisee was convicted. The clerk shall transmit any money collected pursuant to this subsection to the State to be deposited in the State's General Fund. In no event shall a supervisee be required to pay more than one supervision fee per month."

SECTION 1.2.(c) G.S. 15A-1374(c) reads as rewritten:

"(c) Supervision Fee. – The Commission must require as a condition of parole that the parolee pay a supervision fee of ~~twenty dollars ($20.00)~~ thirty dollars ($30.00) per month. The Commission may exempt a parolee from this condition of parole only if it finds that requiring him to pay the fee will constitute an undue economic burden. The fee must be paid to the clerk of superior court of the county in which the parolee was convicted. The clerk must transmit any money collected pursuant to this subsection to the State to be deposited in the general fund of the State. In no event shall a person released on parole be required to pay more than one supervision fee per month."

SECTION 1.2.(d) This section becomes effective October 1, 2002, and applies to supervision fees assessed or collected on or after that date.

SECTION 1.3. Reserved.

SECTION 1.4.(a) G.S. 20-135.2A(e) reads as rewritten:

"(e) Any driver or passenger who fails to wear a seat belt as required by this section shall have committed an infraction and shall pay a penalty of twenty-five dollars ($25.00). Conviction of an infraction under this section has no consequence other than payment of a penalty. ~~A~~ For a person found responsible for a violation of this ~~section may not be assessed court costs.~~section, the only court costs assessed shall be the General Court of Justice fee imposed under G.S. 7A-304(a)(4)."

SECTION 1.4.(b) This section becomes effective September 1, 2002, and applies to offenses committed on or after that date.

SECTION 1.5.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(4) For support of the General Court of Justice, the sum of ~~sixty-five dollars ($65.00)~~ seventy-five dollars ($75.00) in the district court, including cases before a magistrate, and the sum of ~~seventy-two dollars ($72.00)~~ eighty-two dollars ($82.00) in the superior court, to be remitted to the State Treasurer. For a person convicted of a felony in superior court who has made a first appearance in district court, both the district court and superior court fees shall be assessed. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4.

...."

SECTION 1.5.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(2) For support of the General Court of Justice, the sum of ~~fifty-nine dollars ($59.00)~~ sixty-nine dollars ($69.00) in the superior court, and the sum of ~~forty-four dollars ($44.00)~~ fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum

shall be ~~thirty-three dollars ($33.00).~~ forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4."

SECTION 1.5.(c) This section becomes effective September 1, 2002, and applies to offenses committed and civil cases filed on or after that date.

SECTION 1.6.(a) G.S. 15A-145(c) reads as rewritten:

"(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The cost of expunging such records shall be taxed against the petitioner.~~"

SECTION 1.6.(b) G.S. 15A-145 is amended by adding a new subsection to read:

"(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(c) G.S. 15A-146(b) reads as rewritten:

"(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. ~~The costs of expunging such records shall be taxed against the petitioner.~~"

SECTION 1.6.(d) G.S. 15A-146 is amended by adding a new subsection to read:

"(d) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(e) G.S. 90-96 is amended by adding a new subsection to read:

"(f) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of sixty-five dollars ($65.00) at the

time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

SECTION 1.6.(f) This section becomes effective October 1, 2002, and applies to petitions filed on or after that date.

SECTION 1.7. Reserved.

SECTION 1.8.(a) G.S. 50B-2 reads as rewritten:

"**§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders.**

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. No court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena in compliance with the Violence Against Women Act, 42 U.S.C. § 3796gg-5.

(b) Emergency Relief. - A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served.

(c) Ex Parte Orders. - Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts provided, however, that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the

aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county. Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served.

(c1) Ex Parte Orders by Authorized Magistrate. - The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter such orders as it deems necessary to protect the aggrieved party or minor children from such acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of bodily injury or sexual abuse. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody to pursuant subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. -- The clerk of superior court of each county shall provide to pro se complainants all forms which are necessary or appropriate to enable them to proceed pro se pursuant to this section. The Clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section."

SECTION 1.8.(b) G.S. 50B-3(a) reads as rewritten:

"(a) The court, including magistrates as authorized under G.S. 50B-2(c1), may grant any protective order or approve any consent agreement to bring about a cessation of acts of domestic violence. The orders or agreements may:

...

(10) Award ~~costs and~~ attorney's fees to either party;

..."

SECTION 1.8.(c) G.S. 50B-4 reads as rewritten:

"(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. This party may file and proceed with that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be ~~served, upon payment of the required service fees.~~served."

SECTION 1.8.(d) G.S. 1-110(a)(6) is repealed.

SECTION 1.8.(e) This section becomes effective October 1, 2002.

SECTION 1.9.(a) G.S. 7A-308(c) reads as rewritten:

"(c) A person who participates in a program for the collection of worthless checks under G.S. 14-107.2 must pay a fee of ~~fifty dollars ($50.00).~~ sixty dollars ($60.00). The fee collected under this subsection must be remitted to the State by the clerk of the court in the county in which the program is established and credited to the Collection of Worthless Checks Fund. The Collection of Worthless Checks Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of the fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The money in the Fund is subject to appropriation by the General Assembly and may be used solely for the expenses of the programs established under G.S. 14-107.2 for the collection of worthless ~~checks.~~ checks, including personnel, equipment, and other costs of district attorneys' offices that are attributable to the provision of these programs."

SECTION 1.9.(b) This section becomes effective October 1, 2002.

SECTION 1.10.(a) G.S. 7A-304(a) is amended by adding a new subdivision to read:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

...

(7) For the services of the State Bureau of Investigation laboratory facilities, the district or superior court judge shall, upon conviction, order payment of the sum of three hundred dollars ($300.00) to be remitted to the Department of Justice for support of the State Bureau of Investigation. This cost shall be assessed only in cases in which, as part of the investigation leading to the defendant's conviction, the laboratories have performed DNA analysis of the crime, tests of bodily fluids of the defendant for the presence of alcohol or controlled

substances, or analysis of any controlled substance possessed by the defendant or the defendant's agent. The court may waive or reduce the amount of the payment required by this subdivision upon a finding of just cause to grant such a waiver or reduction."

SECTION 1.10.(b) G.S. 90-95.3(b) is repealed.

SECTION 1.10.(c) Subsection (a) of this section becomes effective October 1, 2002, and applies to court costs assessed or paid on or after that date. Subsection (b) of this section becomes effective October 1, 2002, but the provisions of G.S. 90-95.3(b) continue to apply to any defendant who was ordered to make restitution under the provisions of that subsection prior to October 1, 2002.

SECTION 1.11.(a) G.S. 114-10.1(c) reads as rewritten:

"(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, ~~and~~ who shall have access to ~~such information~~ that information, and fees for access to that information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history."

SECTION 1.11.(b) The Division of Criminal Information shall charge the following monthly fees for the Police Information Network for the 2002-2003 fiscal year:

(1) Circuit fee: $67.00.

(2) Terminal fee: $29.50.

SECTION 1.11.(c) This section becomes effective January 1, 2003.

SECTION 1.12.(a) Article 36 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-455.1. Appointment fee in criminal cases.**

(a) Each person who requests the appointment of counsel in a criminal case shall pay to the clerk of court a nonrefundable appointment fee of fifty dollars ($50.00) at the time of appointment. Partial payments shall be credited against the amount of the fifty-dollar ($50.00) fee due. No fee shall be due if the court finds that the person is not entitled to the appointment of counsel.

(b) The appointment fee in this section is due regardless of the outcome of the proceedings. If paid before the final determination of the action at the trial level, the amount of the fee paid shall be credited against any amounts the court determines to be owed for the value of legal services rendered to the defendant. If not paid before the final determination of the action at the trial level, the unpaid amount of the fee shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorney's fees

are collected for such representation. If no attorney's fees are found due when the action is finally determined at the trial level, a judgment shall be entered, docketed, and indexed pursuant to G.S. 1-233 in the amount of the unpaid fee and shall constitute a lien as prescribed by the general law of the State applicable to judgments.

(c) The attorney representing the defendant when the action is finally determined at the trial level shall advise the court whether the appointment fee required by this section has been paid.

(d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.

(e) The appointment fee required by this section shall be assessed only once for each affidavit of indigency submitted by a defendant or other determination of indigency by the court, regardless of the number of cases for which an attorney is appointed. An additional appointment fee shall not be assessed for any additional cases thereafter assigned to an attorney if any cases for which a defendant was previously assessed an appointment fee are still pending. Nor shall an additional appointment fee be assessed if the charges for which an attorney was appointed are dismissed and subsequently refiled or if the defendant is appointed an attorney on appeal on a matter for which the defendant was assessed an appointment fee at the trial level.

(f) Of each appointment fee collected under this section, the sum of forty-five dollars ($45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars ($5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.

(g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section."

SECTION 1.12.(b) G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

a. Sums in restitution to the victim entitled thereto;
b. Costs due the county;
c. Costs due the city;
d. Fines to the county school fund;
e. Sums in restitution prorated among the persons other than the victim entitled thereto;
f. Costs due the State;
g. Attorney's ~~fees.~~ fees, including appointment fees assessed pursuant to G.S. 7A-455.1."

SECTION 1.12.(c) This section becomes effective October 1, 2002.

SECTION 1.13.(a) The Department of Justice shall charge a fee of ten dollars ($10.00) per night to those persons who lodge in the dormitories at the North Carolina Justice Academy. This fee shall apply to both the Salemburg and the Edneyville locations of the Academy.

SECTION 1.13.(b) This section becomes effective October 1, 2002.

SECTION 1.14.(a) G.S. 7A-309 reads as rewritten:

"**§ 7A-309. Magistrate's special fees.**

The following special fees shall be collected by the magistrate and remitted to the clerk of superior court for the use of the State in support of the General Court of Justice:

(1) Performing marriage ceremony ..... ~~$10.00~~$20.00

(2) Hearing petition for year's allowance to surviving spouse or child, issuing notices to commissioners, allotting the same, and making return ..... ~~4.00~~8.00

(3) Taking a deposition ..... ~~5.00~~10.00

(4) Proof of execution or acknowledgment of any instrument ..... ~~1.00~~2.00

(5) Performing any other statutory function not incident to a civil or criminal action ..... ~~1.00~~2.00"

SECTION 1.14.(b) This section becomes effective October 1, 2002.

PART II. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FEES

SECTION 2.1. G.S. 130A-294.1(e) reads as rewritten:

"(e) A person who generates either one kilogram or more of any acute hazardous waste as listed in 40 C.F.R. § 261.30(d) or § 261.33(e) as revised 1 July 1987, or 1000 kilograms or more of hazardous waste, in any calendar month during the year beginning 1 July and ending 30 June shall pay an annual fee of ~~five hundred dollars ($500.00)~~seven hundred fifty dollars ($750.00)."

SECTION 2.2. G.S. 130A-294.1(f) reads as rewritten:

"(f) A person who generates 100 kilograms or more of hazardous waste in any calendar month during the year beginning 1 July and ending 30 June but less than 1000 kilograms of hazardous waste in each calendar month during that year shall pay an annual fee of ~~twenty-five dollars ($25.00)~~thirty-seven dollars and fifty cents ($37.50)."

SECTION 2.3.(a) G.S. 130A-248(d) reads as rewritten:

"(d) The Department shall charge each establishment subject to this section, except nutrition programs for the elderly administered by the Division of Aging of the Department of Health and Human Services, establishments that prepare and sell meat food products or poultry products, and public school cafeterias, an annual fee of ~~twenty-five dollars ($25.00)~~fifty dollars ($50.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any establishment that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend the permit of an establishment that fails to pay the required fee within 60 days after billing by the Department. The Department shall charge a reinstatement fee of one hundred fifty dollars ($150.00) to any establishment that requests reinstatement of its permit after the permit has been suspended. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be used for State and local food, lodging, and institution sanitation programs and activities. No more than thirty-three and one-third

percent (33-1/3%) of the fees collected under this subsection may be used to support State health programs and activities."

SECTION 2.3.(b) The Legislative Research Commission may study the current program within the Department of Environment and Natural Resources regarding the regulation of food and lodging facilities to determine whether the annual fee paid by establishments under G.S. 130A-248(d), as amended by subsection (a) of this section, is sufficient for the State and local food, lodging, and institution sanitation programs and activities. The Legislative Research Commission shall report no later than the convening of the 2004 Regular Session of the 2003 General Assembly. This report shall include a recommendation as to whether the annual fee paid by establishments should remain at fifty dollars ($50.00) or should be changed, and if so, to what amount it should be changed in order to improve the State and local food, lodging, and institution sanitation programs and activities. This report shall include any legislative proposals needed to accomplish the Commission's recommendations.

SECTION 2.4. G.S. 130A-248 is amended by adding two new subsections to read:

"(e) In addition to the fees under subsection (d) of this section, the Department may charge a fee of two hundred dollars ($200.00) for plan review by the Department of plans for franchised or chain facilities for food establishments subject to this section. All of the fees collected under this subsection may be used to support the State food, lodging, and institution sanitation programs and activities under this Part.

(f) Any local health department may charge a fee not to exceed two hundred dollars ($200.00) for plan review by that local health department of plans for food establishments subject to this section that are not plans for franchised or chain facilities. All of the fees collected under this subsection may be used for local food, lodging, and institution sanitation programs and activities."

SECTION 2.5. The Department of Environment and Natural Resources shall adopt temporary rules to increase the entry fee for use of State recreation areas at Jordan Lake and at Falls Lake from four dollars ($4.00) per vehicle to five dollars ($5.00) per vehicle. This section is not intended to preempt the Department's authority under G.S. 113-35 to charge and collect reasonable fees in the future for the use of State lakes. The fee increases under this section shall remain in effect until the Department subsequently adopts rules under G.S. 113-35 to change these fees other than the rules that are adopted to implement this section.

SECTION 2.6. Except as otherwise provided, this part becomes effective October 1, 2002.

PART III. DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES FEES

SECTION 3.1. G.S. 19A-27 reads as rewritten:

"§ 19A-27. License required for operation of pet shop.

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in

the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 3.2. G.S. 19A-28 reads as rewritten:

"**§ 19A-28. License required for public auction or boarding kennel.**

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof beginning with the first day of the fiscal year."

SECTION 3.3. G.S. 19A-29 reads as rewritten:

"**§ 19A-29. License required for dealer.**

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) for each license period or part thereof, beginning with the first day of the fiscal year."

SECTION 3.4. G.S. 80-62 reads as rewritten:

"**§ 80-62. Fees for recording.**

The Commissioner is authorized to collect a fee of ~~twenty-five dollars ($25.00)~~ fifty dollars ($50.00) for the recording of each new brand, or for rerecording of each brand, and shall issue one certified copy of each brand recording to the holder of said brand. Duplicate certificates of registration may be issued by the Commissioner upon payment of a fee of two dollars ($2.00). Revenues collected pursuant to this Article shall be deposited with the State Treasurer to the account of the North Carolina Department of Agriculture and Consumer Services."

SECTION 3.5.(a) G.S. 81A-11 is repealed.

SECTION 3.5.(b) Chapter 81A of the General Statutes is amended by adding a new section to read:

"**§ 81A-12. Fee schedule.**

(a) The following fees apply to all weights that are tested and certified to meet tolerances less stringent than American Society for Testing and Materials (ASTM) Standard E617 Class 4. This includes the National Institutes of Standards and Technology (NIST) Class F tolerance. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee of one-half the normal fee. No extra fee will be charged for the normal adjustment of a weight cart. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 5.00	0-5 kg	$ 5.00
11-100 lb	$ 7.50	6-50 kg	$ 7.50
101-1000 lb	$ 15.00	51-500 kg	$ 15.00
1001-2500 lb	$ 30.00	501-1000 kg	$ 30.00
2501-6000 lb	$ 50.00	1001-2500 kg	$ 50.00

Weight Carts

3000 to 6000 lb	$100.00

(b) The following fees apply to all weights that are tested and certified to meet ASTM Standard E617 Class 4 or International Organization of Legal Metrology (OIML) R111 Class F2 tolerances. If the weight error exceeds three-fourths of the applicable tolerance, adjustment may be required at an additional fee equal to the normal fee. Even if weights are rejected or condemned, fees shall be assessed for the test performed.

Customary	Fee/Unit	Metric	Fee/Unit
0-10 lb	$ 10.00	0-5 kg	$ 10.00
11-100 lb	$ 15.00	6-50 kg	$ 15.00
101-1000 lb	$ 30.00	51-500 kg	$ 30.00
1001-2500 lb	$ 60.00	501-1000 kg	$ 60.00
2501-6000 lb	$100.00	1001-2500 kg	$100.00

(c) The following fees apply to all weights that are calibrated. Calibration means determining actual mass and conventional mass values with an assigned uncertainty specific to the test. If necessary and considered feasible by the metrologist, adjustments to ASTM Class 1, 2, or 3 tolerances or OIML Class E2, F1, or F2 tolerances may be made for an additional fee of two times the normal fee. Tolerance testing fees shall be assessed on weights that can only be adjusted to a lower tolerance or are rejected for any reason.

Customary	Fee/Unit	Metric	Fee/Unit
0-20 lb	$ 20.00	0-10 kg	$ 20.00
21-50 lb	$ 40.00	11-30 kg	$ 40.00
51-1000 lb	$ 70.00	31-450 kg	$ 70.00
1001-2500 lb	$130.00	451-1000 kg	$130.00
2501-6000 lb	$200.00	1001-2500 kg	$200.00

(d) The following fees apply to all weights that are calibrated using NIST weighing designs. These weights are tested in groups and are subject to the minimum per series fee shown. The best uncertainty possible from the North Carolina Standards Laboratory will be assigned to the mass values of the weights. No adjustments will be made.

Weight Range	Fee/Unit or Series	Minimum Charge
0 – 1 kg	$30.00 each	$90.00 (3 weights) per series
2 – 30 kg	$50.00 each	$150.00 (3 weights) per series
0 – 2 lb	$30.00 each	$90.00 (3 weights) per series
3 – 50 lb	$50.00 each	$150.00 (3 weights) per series

(e) The following fees apply to volumetric flasks, graduates, or test measures.

Customary	Fee/Test Point	Metric	Fee/Test Point
0 – 5 gal	$ 30.00	0 – 20 liters	$ 30.00
Over 4 gal	Add $0.40 per each additional gallon	Over 20 liters	Add $0.10 per each additional liter

(f) The following fees apply to tape measures and rigid rules.

Set Up Fee	$ 40.00 per instrument

Calibration $ 10.00 calibration point

(g) The following fees apply to liquid-in-glass and electronic thermometers.

Set Up Fee $ 40.00 per instrument

Calibration $ 20.00 per calibration point

(h) Any special tests or weight cleaning shall be billed at the rate of $50.00 per hour prorated to the nearest tenth of an hour, with a minimum charge of $25.00.

(i) A minimum charge of $25.00 per invoice will apply.

(j) If travel is required in connection with the performance of any of these services, the Department shall be reimbursed at the rates provided in G.S. 138-6.

(k) The Department may refuse to accept for testing any weight or measure the Department deems unsuited for its intended use.

(l) The fee for tests performed on weights or measures that will be used primarily outside of the State of North Carolina shall be twice the amounts set forth in this section."

SECTION 3.6. G.S. 106-254 reads as rewritten:

"**§ 106-254. Inspection fees; wholesalers; retailers and cheese factories.**

For the purpose of defraying the expenses incurred in the enforcement of this Article, the owner, proprietor or operator of each ice cream factory where ice cream, milk shakes, milk sherbet, sherbet, water ices, mixes for frozen or semifrozen desserts and other similar frozen or semifrozen food products are made or stored, or any cheese factory or butter-processing plant that disposes of its products at wholesale to retail dealers for resale in this State shall pay to the Commissioner of Agriculture each year an inspection fee of ~~forty dollars ($40.00).~~ sixty dollars ($60.00). Each maker of ice cream, milk shakes, milk sherbet, sherbet, water ices and/or other similar frozen or semifrozen food products who disposes of his product at retail only, and cheese factories, shall pay to the Commissioner of Agriculture an inspection fee of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) each year. The inspection fee ~~of ten dollars ($10.00)~~ shall not apply to conventional spindle-type milk-shake mixers, but shall apply to milk-shake dispensing and vending machines, which operate on a continuous or automatic basis."

SECTION 3.7. G.S. 106-277.28 reads as rewritten:

"**§ 106-277.28. License and inspection fees.**

For the purpose of providing a fund to defray the expense of inspection, examination, and analysis of seeds and the enforcement of this Article:

(1) Repealed by Session Laws 1991, c. 588, s. 1.

(2) Each seed dealer who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay the following license fee:

a. Wholesale or combined wholesale and retail seed dealer ..... ~~$100.00~~ $145.00

b. Retail seed dealer with sales of no more than $500.00 ..... ~~5.00~~

.....10.00

c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 .....~~15.00~~ 25.00

d. Retail seed dealer with sales of more than $1,000.....~~25.00.~~ .....40.00.

(3) Each seed dealer or grower who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed offered for sale and pay an inspection fee of two cents (2¢) for each container of seeds weighing 10 pounds or more. Seed shall be subject to the inspection fee and reporting requirements only once in any 12-month period. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

Each seed dealer or grower shall keep accurate records of the quantity of seeds and container weights offered for sale from each distribution point in the State. These records shall be available to the Commissioner or an authorized representative of the Commissioner at any and all reasonable hours for the purpose of verifying the quantity of seed offered for sale and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds first offered for sale that quarter. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter. Inspection fees shall be due and paid with the next quarterly report filed after the seed is first offered for sale. If the report is not filed and the inspection fees paid to the Department of Agriculture and Consumer Services by the tenth day following the date due, or if the report of the quantity or container weights is false, the Commissioner may issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fees are unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fees due."

SECTION 3.8.(a) G.S. 106-284.34(c) reads as rewritten:

"(c) No person shall distribute in this State a commercial feed, except a customer-formula feed, which has not been registered pursuant to the provisions of this section. The application for registration shall be submitted in the manner prescribed by the Commissioner. Upon approval by the Commissioner or his duly designated agent the registration shall be issued to the applicant. All registrations expire on the thirty-first day of December of each year. An annual registration fee of ~~three dollars ($3.00)~~ five dollars ($5.00) for each commercial feed other than canned pet food shall accompany each request for registration. An annual registration fee of ten dollars ($10.00) for each canned pet food shall accompany each request for registration."

SECTION 3.8.(b) G.S. 106-284.40(b)(4) reads as rewritten:

"(b) An inspection fee at the rate of twelve cents (12¢) per ton shall be paid on commercial feeds distributed in the State by the person whose name appears on the label

of the commercial feed as the manufacturer, distributor or guarantor of the commercial feed, subject to the following:

...

(4) In the case of a commercial feed other than canned pet food which is distributed in the State only in packages of five pounds or less, an annual registration fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) shall be paid in lieu of the inspection fee specified above."

SECTION 3.9. G.S. 106-406 reads as rewritten:

"**§ 106-406. Permits from Commissioner of Agriculture for operation of public livestock markets; application therefor; hearing on application.**

Any person, firm or corporation desiring to operate a public livestock market within the State of North Carolina shall be required to file an application with the Commissioner of Agriculture for a permit authorizing the operation of such market; provided that, those markets operating under a valid permit and in accordance with G.S. 106-406 through 106-418 at the time this Article becomes effective shall be issued a license upon payment of the annual license fee and upon satisfying the requirement for bonding as specified in G.S. 106-407. An application for a permit shall include the following information:

(1) The name and address of the applicant, name of market and a listing of the names and addresses of all persons having any financial interest in the proposed livestock market and the amount and nature of such interest, and such other information as is required to complete an application form supplied by the Commissioner; and

(2) The plans and specifications for the facilities proposed to be built, or for existing structures.

The application for a permit shall be accompanied by a permit fee of ~~two hundred fifty dollars ($250.00),~~ three hundred fifty dollars ($350.00), two hundred dollars ($200.00) of which shall be returned to the applicant if the application is denied, plus one hundred dollars ($100.00) annual permit fee for the first year of operation of the market, all of which shall be returned to the applicant if the application is denied. There shall be an annual renewal fee of ~~one hundred dollars ($100.00)~~ one hundred fifty dollars ($150.00) for each year of operation thereafter.

Upon the filing of said application, the Commissioner shall determine whether all necessary information has been furnished. If all information required has not been furnished, the Commissioner shall notify the applicant by mail of the additional information needed; it shall be furnished the Commissioner by the applicant within 10 days of such notification. Upon receipt of all required information, the Commissioner shall issue a license or fix the date of a hearing on said application, to be held in Raleigh. Notice of the time and date of the hearing shall be published in a newspaper having general circulation in the county in which the livestock market is proposed to be located; said notice shall appear at least 10 days prior to such hearing. The applicant shall be notified by mail by the Commissioner at least 20 days prior to the hearing of the time and place of said hearing. The Commissioner shall also notify by mail the

members of the Public Livestock Market Advisory Board of the time and place of said hearing, at least 10 days before the date on which the hearing will be held.

A public hearing shall be conducted by the Commissioner on said application. If, after the hearing, at which any person may appear in support or opposition thereto, the North Carolina Public Livestock Market Advisory Board finds that the public livestock market for which a permit or license is sought fulfills the requirements of all applicable laws, it shall recommend to the Commissioner that a permit be issued to the applicant. If the Commissioner denies the application, the applicant may commence a contested case under G.S. 150B-23 by filing a petition within 10 days after receiving notice of the denial. Unless revoked by the Board of Agriculture pursuant to any applicable law or regulation, permits will be renewed each July 1 on payment of the annual renewal fee."

SECTION 3.10. G.S. 106-418.11(a) reads as rewritten:

"(a) Any person desiring to be licensed as a livestock dealer shall make application to the Commissioner. ~~Such~~ The application shall contain the address, both business and personal, of the ~~applicant.~~ applicant, and must be accompanied by a nonrefundable fee of fifty dollars ($50.00). No financial information shall be required from the applicant.

Whenever an applicant has complied with this Article, the Commissioner shall issue to such applicant a license which shall entitle the licensee to engage in the business of livestock dealer for a period of one year, unless such license is sooner suspended, or revoked in accordance with the provisions of this Article.

The license may be renewed annually by written request to the Commissioner on a form prepared by the Department of Agriculture and Consumer Services, which form shall require only the name and current address of the licensee. ~~No~~ A renewal fee of fifty dollars ($50.00) shall be charged."

SECTION 3.11.(a) G.S. 106-542(b1) reads as rewritten:

"(b1) It shall be unlawful for any person, firm, or corporation to operate as a live poultry or ratite dealer without first ~~registering with~~ obtaining an annual license from the Department of Agriculture and Consumer ~~Services.~~Services, for a fee of twenty dollars ($20.00) a year."

SECTION 3.11.(b) This section becomes effective January 1, 2003.

SECTION 3.12. G.S. 143-442(b) reads as rewritten:

"(b) The applicant shall pay an annual registration fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) plus an additional annual assessment for each brand or grade of pesticide registered. The annual assessment shall be fifty dollars ($50.00) if the applicant's gross sales of the pesticide in this State for the preceding 12 months for the period ending September 30th were more than five thousand dollars ($5,000.00) and twenty-five dollars ($25.00) if gross sales were less than five thousand dollars ($5,000.00). An additional two hundred dollars ($200.00) delinquent registration penalty shall be assessed against the registrant for each brand or grade of pesticide which is marketed in North Carolina prior to registration as required by this Article. In the case of multi-year registration, the annual fee and additional assessment for each year shall be paid at the time of the initial registration. The Board shall give a pro rata refund of the registration fee and additional assessment to the registrant in the event that

registration is canceled by the Board or by the United States Environmental Protection Agency."

SECTION 3.13. G.S. 143-448 reads as rewritten:

"**§ 143-448. Licensing of pesticide dealers; fees.**

(a) No person shall act in the capacity of a pesticide dealer, or shall engage or offer to engage in the business of, advertise as, or assume to act as a pesticide dealer unless he is licensed annually as provided in this Part. A separate license and fee shall be obtained for each location or outlet from which restricted use pesticides are distributed, sold, held for sale, or offered for sale.

(b) Applications for a pesticide dealer license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~thirty dollars ($30.00).~~ forty-five dollars ($45.00). All licenses issued under this Part shall expire on December 31 of the year for which they are issued.

(c) The license for a pesticide dealer may be renewed annually upon application to the Board, accompanied by a fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) for each license, on or before the first day of January of the calendar year for which the license is issued.

(d) Repealed by Session Laws 1981, c. 592, s. 6.

(e) Every licensed pesticide dealer who changes his address or place of business shall immediately notify the Board.

(f) The Board shall issue to each applicant that satisfies the requirements of this Part a license which entitles the applicant to conduct the business described in the application for the calendar year for which the license is issued, unless the license is sooner revoked or suspended."

SECTION 3.14. G.S. 143-452(b) reads as rewritten:

"(b) Applications for pesticide applicator license shall be in the form and shall contain the information prescribed by the Board. Each application shall be accompanied by a non-refundable fee of ~~thirty dollars ($30.00)~~ forty-five dollars ($45.00) for each pesticide applicator's license. In addition, an annual inspection fee of ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) shall be submitted for each aircraft to be licensed. Should any aircraft fail to pass inspection, making it necessary for a second inspection to be made, the Board shall require an additional ~~ten dollar ($10.00)~~ fifteen dollar ($15.00) inspection fee. In addition to the required inspection, unannounced inspections may be made without charge to determine if equipment is properly calibrated and maintained in conformance with the laws and regulations. All aircraft licensed to apply pesticides shall be identified by a license plate or decal furnished by the Board at no cost to the licensee, which plate or decal shall be affixed on the aircraft in a location and manner prescribed by the Board. No applicator inspection or license fee, original or renewal, shall be charged to State agencies or local governments or their employees. Inspections of ground pesticide application equipment may be made. Any such equipment determined to be faulty or unsafe shall not be used for the purpose of applying a pesticide(s) until such time as proper repairs and/or alterations are made."

SECTION 3.15. G.S. 143-455(a) reads as rewritten:

"(a) No person shall perform services as a pest control consultant without first procuring from the Board a license. Applications for a consultant license shall be in the form and shall contain the information prescribed by the Board. The application for a license shall be accompanied by a non-refundable annual fee of ~~thirty dollars ($30.00).~~forty-five dollars ($45.00)."

SECTION 3.16. The Board of Agriculture shall charge the following fees for agronomic services:

(1)	Nematode assays for nonresidents	$10.00
(2)	Plant tissue and solution sample analysis for nonresidents	$15.00
(3)	Waste sample analysis for nonresidents	$25.00
(4)	Nematode species identification/soybean cyst nematode race identification	$20.00
(5)	Waste N breakout	$15.00
(6)	Waste heavy metals	$25.00
(7)	Heavy metal analysis in soils	$25.00
(8)	Nematode assay in-state research	$10.00
(9)	Plant/Waste/Solution in-state research	$20.00
(10)	Routine analysis of in-State research soil samples	$ 5.00
(11)	Routine analysis soil samples non-farmers	$ 5.00
(12)	Routine analysis soil sample farmers	$ 2.00

SECTION 3.17. The Board of Agriculture shall charge the following fees for animal disease diagnostic tests or services:

	Test/Service	Fee
(1)	Pullorum	$0.10
(2)	M Synoviae	0.50
(3)	EIA	5.00
(4)	M. meleagridis	0.50
(5)	Necropsy	25.00
(6)	M Gallisep	0.50
(7)	Mg,Ms,Mm-HI	1.25
(8)	Histopathology	25.00
(9)	Cytology	10.00
(10)	Necropsy Disposal	
	10 to 100 pounds	5.00
	100 to 500 pounds	15.00
	More than 500 pounds	30.00
(11)	Health Certificates	8.00
(12)	Equine Health Certificates	10.00

SECTION 3.18. Except as otherwise provided, this part becomes effective October 1, 2002.

PART IV. DEPARTMENT OF HEALTH AND HUMAN SERVICES FEES

SECTION 4.1.(a) G.S. 130A-93.1 reads as rewritten:

§ 130A-93.1. Fees for vital records copies or search; automation fund.

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made. When certificates are issued or searches conducted by local agencies using databases maintained by the State Registrar, the local agency shall charge this fee and shall forward five dollars ($5.00) of this fee to the State Registrar for purposes established in subsection (b) of this section.

(2) A fee not to exceed ~~ten dollars ($10.00)~~fifteen dollars ($15.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(2a) The fee for a copy of a computer or microform database shall not exceed the cost to the agency of making and providing the copy.

(3) Except as provided in subsection (b) of this section, fees collected under this subsection shall be used by the Department for public health purposes.

(b) The Vital Records Automation Account is established as a nonreverting account within the Department. Five dollars ($5.00) of each fee collected pursuant to subdivision (a)(1) shall be credited to this Account. The Department shall use the revenue in the Account to fully automate and maintain the vital records system. When funds sufficient to fully automate and maintain the system have accumulated in the Account, fees shall no longer be credited to the Account but shall be used as specified in subdivision (a)(3) of this section."

SECTION 4.1.(b) G.S. 130A-118(d) reads as rewritten:

"(d) For the amendment of a certificate of birth or death after its acceptance for filing, or for the making of a new certificate of birth under this Article, the State Registrar shall be entitled to a fee not to exceed ~~seven dollars and fifty cents ($7.50)~~fifteen dollars ($15.00) to be paid by the applicant."

SECTION 4.2. The Department of Health and Human Services shall charge a fee in the amount of ten dollars ($10.00) for a laboratory test performed by the State Public Health Laboratory under the Newborn Screening Program pursuant to G.S. 130A-125. If the actual cost to perform the test exceeds the amount of the fee authorized under this section, then the Department may increase the fee in accordance with its authority under G.S. 130A-125(c) to cover the cost.

SECTION 4.3. Except as otherwise provided, this part becomes effective October 1, 2002.

PART V. SECRETARY OF STATE FEES

SECTION 5.1 G.S. 10A-4(b)(6) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

...

(6) Pay a nonrefundable fee of ~~thirty dollars ($30.00).~~fifty dollars ($50.00)."

SECTION 5.2. G.S. 78A-17(9) reads as rewritten:

"(9) Any transaction pursuant to an offer directed by the offeror to not more than 25 persons, other than those persons designated in subdivision (8), in this State during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this State, if the seller reasonably believes that all the buyers in this State are purchasing for investment. The Administrator may by rule or order withdraw, amend, or further condition this exemption for any security or security ~~transaction and establish a~~transaction. There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing ~~required, not to exceed one hundred fifty dollars ($150.00).~~required."

SECTION 5.3. G.S. 78A-17(17) reads as rewritten:

"(17) Any transaction that is exempt pursuant to rules established by the Administrator creating limited offering transactional exemptions that are consistent with the objectives of compatibility with federal limited offering exemptions and uniformity among the states. ~~The Administrator may establish~~ There is established a fee of one hundred fifty dollars ($150.00) to recover costs for any filing required by such ~~rules, not to exceed one hundred fifty dollars ($150.00).~~rules."

SECTION 5.4. G.S. 78A-31(b) reads as rewritten:

"(b) With regard to any security that is covered under section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(4)(d)), the Administrator, by rule or order, may require the issuer to file a notice on SEC Form D (17 C.F.R. § 239.500) and a consent to service of process signed by the issuer no later than 15 days after the first sale of the security in this State. ~~The Administrator may, by rule, establish~~ There is established a fee of one hundred fifty dollars ($150.00) to recover costs for filing required by this ~~section, not to exceed one hundred fifty dollars ($150.00).~~section."

SECTION 5.5. G.S. 55-1-22(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

Document		Fee
(1)	Articles of incorporation	$125.00
(2)	Application for reserved name	~~10.00~~ 30.00
(3)	Notice of transfer of reserved name	10.00
(4)	Application for registered name	10.00
(5)	Application for renewal of registered name	10.00
(6)	Corporation's statement of change of registered agent or registered office or both	5.00

(7)	Agent's statement of change of registered office for each affected corporation	5.00
(8)	Agent's statement of resignation	No fee
(9)	Designation of registered agent or registered office or both	5.00
(10)	Amendment of articles of incorporation	50.00
(11)	Restated articles of incorporation	10.00
	with amendment of articles	50.00
(12)	Articles of merger or share exchange	50.00
(12a)	Articles of conversion (other than articles of conversion included as part of another document)	50.00
(13)	Articles of dissolution	30.00
(14)	Articles of revocation of dissolution	10.00
(15)	Certificate of administrative dissolution	No fee
(16)	Application for reinstatement following administrative dissolution	100.00
(17)	Certificate of reinstatement	No fee
(18)	Certificate of judicial dissolution	No fee
(19)	Application for certificate of authority	250.00
(20)	Application for amended certificate of authority	~~50.00~~75.00
(21)	Application for certificate of withdrawal	~~10.00~~25.00
(22)	Certificate of revocation of authority to transact business	No fee
(23)	Annual report	20.00
(24)	Articles of correction	10.00
(25)	Application for certificate of existence or authorization (paper)	~~5.00~~ 15.00
(25a)	Application for certificate of existence or authorization (electronic)	10.00
(26)	Any other document required or permitted to be filed by this Chapter	10.00
(27)	Repealed by Session Laws 2001-358, s. 6(b)."	

SECTION 5.6. G.S. 55-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.7. G.S. 55A-1-22(a)(26) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary for filing:

...

(26)	Application for certificate of existence or authorization (paper)	~~$5.00~~ $15.00
(26a)	Application for certificate of existence or authorization (electronic)	$10.00"

SECTION 5.8. G.S. 55A-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign corporation:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.9. G.S. 57C-1-22(a)(24) reads as rewritten:

"(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:

...

(24) Application for certificate of existence or authorization (paper) ~~5.00~~ 15.00

(24a) Application for certificate of existence or authorization (electronic) 10.00"

SECTION 5.10. G.S. 57C-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited liability company:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate."

SECTION 5.11. G.S. 59-1106(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of any filed document relating to a domestic or foreign limited partnership:

(1) One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) ~~Five dollars ($5.00) for the certificate.~~ Fifteen dollars ($15.00) for a paper certificate.

(3) Ten dollars ($10.00) for an electronic certificate.

SECTION 5.12. G.S. 147-37 reads as rewritten:

"**§ 147-37. Secretary of State; fees to be collected.**

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ten dollars ($10.00) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his ~~office.~~office, except that if two or more certificates for foreign adoption are requested concurrently, the fee for the second and subsequent certificates is five dollars ($5.00)."

SECTION 5.13. G.S. 120-47.3 reads as rewritten:

"**§ 120-47.3. Registration fee.**

Every lobbyist's principal shall pay to the Secretary of State a fee of ~~seventy-five dollars ($75.00) which fee shall be~~two hundred dollars ($200.00) that is due and payable by either the lobbyist or the lobbyist's principal at the time of registration.

A separate registration, together with a separate registration fee of ~~seventy-five dollars ($75.00), shall be~~two hundred dollars ($200.00) is required for each lobbyist's principal for which a person acts as a lobbyist. Fees so collected shall be deposited in the General Fund of the State."

SECTION 5.14. G.S. 78A-37(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two hundred dollars ($200.00)~~three hundred dollars ($300.00) in the case of a dealer and ~~fifty-five dollars ($55.00)~~seventy-five dollars ($75.00) in the case of a salesman. The Administrator may by rule reduce the registration fee proportionately when the registration will be in effect for less than a full year."

SECTION 5.15. G.S. 78C-17(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of two hundred dollars ($200.00) in the case of an investment adviser, and ~~forty-five dollars ($45.00)~~seventy-five dollars ($75.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee.

SECTION 5.16. G.S. 80-3(b) reads as rewritten:

"(b) The application shall be signed and verified by the applicant, by a partner, by a member of the firm, or an officer of the corporation or association applying for registration. In states in which a notary is not required by law to obtain a notary's stamp or seal, an original certificate of authority of the notary issued by the appropriate State agency shall be submitted with the application. If the application is signed by a person acting pursuant to a power of attorney from the applicant, an original power of attorney or a certified copy of the power of attorney shall accompany the application.

The application shall be accompanied by three specimens of the mark as currently used and by a filing fee of ~~fifty dollars ($50.00),~~seventy-five dollars ($75.00), payable to the Secretary."

SECTION 5.17. G.S. 78A-31(a)(4) reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

...

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of ~~one~~ two hundred dollars ~~($100.00)~~($200.00) and by filing any documents and reports that the

Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period."

SECTION 5.18. Except as otherwise provided, this part becomes effective October 1, 2002.

PART VI. EFFECTIVE DATE

SECTION 6. Except as otherwise provided, this act becomes effective October 1, 2002.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: July 18, 2002

TO: House Finance Committee

FROM: Elisa Wolper, Denise Thomas, Jennifer Hoffman, Kelly Huffstetler, Marilyn Chism, Carol Shaw, Lisa Hollowell, Jim Klingler, and Richard Bostic
Fiscal Research Division

RE: House Bill 1670 PCS

FISCAL IMPACT

	Yes (X)	No ( ) ($million)	No Estimate Available ( )		
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues					
General Fund					
-Community Service Work Program Fees	3.8	5.2	5.3	5.4	5.5
-Offender Supervision Fees	4.5	4.5	4.5	4.5	4.5
-Seat Belt Court Costs	10.7	14.7	15.3	15.3	15.3
-Court of Justice Fees	11.2	15.3	15.4	15.6	15.7
-Expungement Fee	.2	.26	.26	.26	.26
-Ct. Fees Domestic Violence	(.1)	(.14)	(.14)	(.14)	(.14)
-Magistrate Special Fees	.19	.25	.25	.25	.25
-Secretary of State Fees	3.22	4.29	4.29	4.29	4.29
TOTAL GENERAL FUND	**33.7**	**44.4**	**45.2**	**45.5**	**45.7**
Agency Receipts					
-Worthless Check Program	.1	.13	.13	.13	.13
-SBI Lab Analyses Fee	.5	.67	.67	.67	.67
-DCI PIN Terminal Fee	.5	1.0	1.0	1.0	1.0
-Indigent Defense Fee	.67	.9	.9	.9	.9
-Justice Academy Lodging Fee	.29	.39	.39	.39	.39
-Hazardous Waste Facility Fee		.14	.14	.14	.13
-Food and Lodging Facility Fee	.23	.3	.3	.3	.3
-Falls and Jordan Lake Fees	.09	.13	.13	.14	.14
-Agriculture Fees	1.5	1.97	1.97	1.97	1.97
-Vital Records Fee	.5	.7	.73	.77	.81
-Newborn Screening Lab Fee	.86	1.17	1.20	1.22	1.24
TOTAL AGENCY RECEIPTS	**5.24**	**7.5**	**7.56**	**7.63**	**7.68**
Court Information Tech. Fund	.07	.1	.1	.1	.1
Local Governments					
-Ct. Fees Domestic Violence	(.05)	(.07)	(.07)	(.07)	(.07)
-Food and Lodging Facility Fee	.48	.64	.64	.64	.64
TOTAL LOCAL GOVTS.	**.43**	**.57**	**.57**	**.57**	**.57**

PRINCIPAL DEPARTMENTS AFFECTED: Department of Correction, Administrative Office of the Courts, Department of Justice, Department of Environment and Natural Resources, Department of Agriculture and Consumer Services, Department of Health and Human Services, Secretary of State

EFFECTIVE DATE: Section 1.4 (Seat Belt Court Costs) and section 1.5 (Court fees) are effective September 1, 2002 and apply to offenses committed on or after that date. Section 1.11 (DCI PIN fees) and section 3.11 (Poultry or Ratite Dealer fee) are effective January 1, 2003. All other sections are effective October 1, 2002.

BILL SUMMARY: The bill establishes, sets, and modifies various fees.

ASSUMPTIONS AND METHODOLOGY:

PART I: JUSTICE AND PUBLIC SAFETY FEES

COMMUNITY SERVICE WORK PROGRAM FEES

The community service work program fee is increased from $100 to $200 in Section 1.1. Offenders sentenced to community service, either as part of supervised probation, parole, unsupervised probation, a DWI offense, or first offender/deferred prosecution, pay a one-time $100 fee. The fee is paid within two weeks of judgment, generally prior to beginning community service. Fees are collected by Clerks of Court and remitted to the State Treasurer/General Fund. This fee was last increased in 1986. Current collections and admissions are detailed below.

Year	1999-2000	2000-01	2001-02 ytd	2001-02 proj
Fees collected	$5,103,549	$5,147,750	$3,964,885	$5,286,500
Admissions	69,300	73,010	56,050	74,733
Collection rate	73.6%	70.5%	70.7%	70.7%

Ytd is through March 31

These statistics show a growth rate of almost 4% per year in admissions and of 1.8%/year in fees. Future year projections assume continued growth in fees due of 1.8% but a decrease in collection rate from 71% to 69% due to the higher fee. The chart below shows new revenue realized at $200 fee, effective October 1, 2002.

Year	2002-03	2003-04	2004-05	2005-06	2006-07
Total	$10.76 M	$10.96 M	$11.15 M	$11.36 M	$11.6 M
Increase Revenue	$ 3.84 M	$5.21 M	$5.31 M	$5.4 M	$5.5 M

OFFENDER SUPERVISION FEES

The new offender supervision fee in Section 1.2 of this bill is $30. Offenders on probation, parole and post release supervision currently pay $20/month during their term of supervision. At least half the states collect similar fees, ranging from $15/month to $103/month. In a recent survey by the American Probation and Parole Association, of the 19 states that reported specific fee amounts, 11 were $30 or more.

The current population on probation/parole is 116,856 and is projected to remain stable. Currently, 58% of probationers are ordered to pay the fee and 62% of those pay it for an overall collection rate of 37%. About 75% of those who pay are on community punishment rather than intermediate punishment. Fees are paid to the Clerk of Court, then remitted to the General Fund.

The Department of Correction (DOC) is reviewing policies and is in discussion with the Judicial Branch to encourage higher collection rates. Collection rates were projected to increase to 45% in FY 2003-04 if the fee remained at $20. With the $30 fee, collection rates are assumed to plateau at 40% in FY 2002-03. That reduces the net gain from the fee increase in the years FY 2003-04 and later.

Current Collections

Year	1999-2000	2000-01	2001-02 ytd	2001-02 proj
Fees collected	$10,603,000	$10,499,000	$8,103,504	$10,804,672

Projected Collections, assume Oct 1 effective date and 40% collection rate

Year	2002-03	2003-04	2004-05	2005-06	2006-07
Total	$12 Mil.	$17.99 Mil.	$17.99 Mil.	$17.99 Mil.	$17.99 Mil.
New Revenue	$4.5 Mil.	$4.5 Mil.	$4.5 Mil.	$4.5 Mil.	$4.5 Mil.

COLLECTING COURT COSTS ON SEAT BELT/MOTORCYCLE HELMET INFRACTIONS

Section 1.4 will end the exemption from court costs for violators of the mandatory seat belt (driver and passenger) and motorcycle/moped helmet laws. Violators of these infractions do not currently pay court costs, but pay a $25 fine that is redistributed to the county school fund. In calendar year 2001, there were 184,525 convictions/admissions of responsibility with payment of fines for the seat belt violations. (The number of motorcycle violations is small and not included in revenue projections.)

Offenders will pay the $25 fine plus the $75 Court of Justice Fee (assuming $10 increase in this bill). They will not pay the facilities, LEOB and service fees that are part of other district court criminal actions. Of the $75 Court of Justice Fee, $1.05 goes to the State Bar for Access to Civil Justice (7A-474), as reflected in the chart below.

Collections for seat belt violations have increased an average of 6% over the past four years. These projections assume a more conservative growth rate of 3% for the first two years and no growth in future years. This no growth assumption is based on the expectation of some deterrent effect and because of the difficulties of projecting in the future.

Projected impacts are as follows, assuming effective September 1, 2002 for violations on or after that date.

Year	2002-03	2003-04	2004-05	2005-06	2006-07
General Fund	$10,699,363	$14,693,792	$15,349,499	$15,349,499	$15,349,499
State Bar/LSNC	$151,918	$208,634	$214,893	$214,893	$214,893

GENERAL COURT OF JUSTICE FEES

Section 1.5 increases the General Court of Justice Fees by $10 for District and Superior Court Criminal and Civil cases. General Court of Justice fees were last raised in 2000 by $4. General Court of Justice Fees are currently as follows:

District Court Criminal	$65
District Court Civil	$44
Superior Court Criminal	$72
Superior Court Civil	$59
Magistrate Civil	$33
Special Proceedings	$30
Estates	$30

Parties also pay facilities and service fees that are remitted to the county, varying from $17 to $35 depending on the specific level of court. An LEOB charge of $8 applies to criminal cases only.

Each $1 of General Court of Justice Fees raises approximately $1,440,469 (excluding special proceedings and estates which would not be affected here), based on FY 2000-01 collections. Court fees have grown modestly in recent years and these projections assume a 1% growth rate each year.

These changes in court fees will be effective September 1 for violations on or after that date. The projected impact is as follows:

2002-03	2003-04	2004-05	2005-06	2006-07
$10,803,517	$14,548,737	$14,694,224	$14,841,167	$14,989,578

Section 1.5 also establishes that for a person convicted of a felony in superior court that also had a first appearance in district court, both district ($75) and superior court ($82) fees apply. Because the collection rate on convicted felony offenders is low and because many fees that are currently paid are only paid in part, this change is anticipated to bring in about $750,000 per year. Applying to offenses on or after Sept. 1, $375,000 is projected the first year.

EXPUNGEMENT FEE

Section 1.6 authorizes the Department of Justice (DOJ) to charge $65 to process an expungement request beginning October 1, 2002. NCGS 15A-145 and 15A-146 state that "the cost of expunging such records shall be taxed against the petitioner," but to date, no petitioners have ever been charged for this service. This new fee will cover the Department's cost of researching, documenting, and eliminating criminal records targeted for expungement. According to DOJ data, in calendar year 2001 the State Bureau of Investigation received 5,897 applications for expungement. Of that total, 4,734 qualified for an expungement and were processed. About 15

percent of expungement applications are not generated by the petitioner or required by the court as a result of NCGS 15A-145 and 15A-146 and may result from judgment or court orders involving the indigent or the wrongfully accused. For these requests, no charges would be assessed for the cost of processing their expungement.

	FY02-03	FY03-04	FY04-05	FY05-06	FY06-07
# Applications Submitted	5,900	5,900	5,900	5,900	5,900
# Applications Exempt from Fee	900	900	900	900	900
Collection Rate	80%	80%	80%	80%	80%
Estimated Total Receipts	$ 195,000	$ 261,000	$ 261,000	$ 261,000	$ 261,000

NO COURT COSTS FOR DOMESTIC VIOLENCE CASES

Section 1.8 requires that court costs be waived in cases of filings for protective orders or witness subpoenas related to cases of domestic violence (Chapter 50B). This is a requirement for the state to be in compliance with the federal Violence Against Women Act.

Under current law, the cost of filing for a protective order is $65 in District Civil Court with $44 of this going to the General Fund for General Court of Justice fees and the remaining $21 going to local governments as a facilities and service fees. However, because court fees are waived if the party is indigent, not all domestic violence victims currently pay these fees. AOC data indicate that there were 21,615 cases in 2001 where domestic violence and ex parte restraining orders were the only issues. (There were an estimated 4,880 cases where domestic violence was only one of the issues and that court fees would still apply.) The AOC estimates that, at most, 15% (or 3,242 cases) of these plaintiffs are currently paying court fees. The cost of prohibiting the levying of court fees in these cases on an annualized basis would be:

General Fund	$142,648
Local Government (facilities fees)	$ 51,872
Local Government (service fees)	$ 16,210

This represents a .14% reduction in General Fund receipts from court fees and a .3% reduction in facilities fees. With an effective date of October 1, the costs in foregone receipts would be reduced by 25%, so the impact in FY 2002-03 is $106,986 General Fund and $51,061 local government.

WORTHLESS CHECK PROGRAM FEE

The worthless check program, administered by District Attorney's Offices in eight judicial districts/13 counties, gives individuals who have written bad checks a last chance to avoid criminal prosecution by paying a fee and making restitution on the bad check. In CY 2001, the program collected restitution on 13,375 worthless checks. The current fee is $50, set when the program was established in 1997. In FY 2001-02, $670,300 was collected from this fee. An increase to $60 in Section 1.9 will increase receipts by $134,000 on an annualized basis. With an effective date of October 1, first year proceeds are $100,545.

The total direct cost of the program is budgeted at $619,574 with additional expenses covered in the $56 million budget for district attorneys. These receipts are budgeted against the cost of this program.

SBI LABORATORY ANALYSES FEE

The SBI Crime Laboratory performs 25,000 to 30,000 drug, 3,000 alcohol, and 1,700 molecular genetic (DNA and body fluids) analyses annually. Current statute gives judges the discretion to require that persons with drug convictions make a restitution payment of $100 to the state to cover the cost of analyses performed by the SBI Crime Laboratory. However, the statute does not permit judges to order restitution payments for the cost of alcohol analyses performed for DWI cases or for any DNA analyses. While current statute permits judges to order a $100 restitution payment, the costs of the analyses are $300. Judges currently order restitution payments for only about 10 percent of the analyses performed. In FY 2000-01, the SBI received restitution payments for 2,500 of the analyses performed. Effective October 1, 2002, Section 1.10 1 requires that: 1) convicted offenders pay restitution for the cost of laboratory analyses, unless the judges waives such a payment; 2) extends laboratory restitution payments to alcohol and DNA analyses; and 3) increases the laboratory restitution payment to $300. Unknown at this time is the actual number of cases for which judges will waive the restitution requirement. Therefore, the fiscal estimates assume restitution payments shall be ordered in 20 percent of cases, double the existing rate. In addition, it is assumed the collection rate will be equivalent to that for parole and probation fees in the Department of Correction, about 35 percent.

	FY02-03	FY03-04	FY04-05	FY05-06	FY06-07
# Drug, Alcohol & DNA analyses	32,000	32,000	32,000	32,000	32,000
# Restitutions Ordered by Judges	4,800	6,400	6,400	6,400	6,400
Collection Rate	35%	35%	35%	35%	35%
Estimated Total Receipts	$504,000	$670,000	$670,000	$670,000	$670,000

DCI PIN TERMINAL RENT INCREASE

Effective January 1, 2003, Section 1.11 increases the rental rates charged to local law enforcement agencies to access the Police Information Network maintained by the Department of Justice, Division of Criminal Information (DCI). The DCI PIN is the primary database used by local law enforcement to obtain criminal justice information on individuals. Law enforcement agencies pay a rental rate for both the terminal connections and the devices used to access the database. The Office of State Budget and Management recently studied the DCI fee structure and issued a report containing recommended fee adjustments. The adjustments will bring the rental rates in line with the Department's actual costs to maintain the DCI database. As a result of the recommended adjustments, the rental rates paid by some local agencies will increase while that for others will decrease depending upon the number of circuits and devices used. Effective January 1, 2003, the new monthly rates are $67 per circuit and $29.50 per terminal. In FY 2002-03, the rate increase will generate $500,000 in additional receipts. For Fiscal Years 2003 through 2007, receipts will increase by $1 million annually.

APPOINTMENT FEE FOR INDIGENT DEFENSE

Section 1.12 authorizes a new $50 fee for persons requesting appointment of counsel in criminal cases. This fee will be due at the time of appointment but inability to pay the fee shall not prevent the person from receiving counsel. The fee is due regardless of the outcome of the case and if it has not been paid by the conclusion of the case, the unpaid balance will be combined with any other judgments related to the case. Of the $50, $5 shall be credited to the Court Information Technology Fund (7A-343.2) and the remainder shall be budgeted as a receipt to the Office of Indigent Defense Services.

As of December 2001, 17 states and counties within five other states had instituted application/appointment fees for indigent counsel with the actual fee varying from $10 to $200. Collection rates vary from 6% to 20%. Based on 200,000 cases per year and a collection rate of 10%, this fee will raise $1,000,000 per year. With an effective date of October 1, 2002, the first year proceeds would be $750,000. Of this, $75,000 will go to the Court Information Technology Fund. These projections do not assume any growth in revenue over time until there is better data on collection and implementation.

JUSTICE ACADEMY LODGING FEE

The NC Justice Academy provides free training to state and local law enforcement personnel at its two campuses located in Salemburg and Edneyville. Both campuses offer dormitory lodging free of charge to students enrolled in the academy. Students who do not stay on campus must pay the full cost of commercial lodging at area hotels/motels. There are 295 dormitory rooms available at the Salemburg campus and 68 rooms at the Edneyville campus. In FY 2000-01, 10,684 students were housed in dormitories while enrolled in courses at the two campuses. Section 1.13 charges a $10 per diem fee to cover the cost of dormitory lodging offered at the Justice Academy campuses and would generate about $395,000 annually. According to data from the Department of Justice, housing related costs at the two campuses total about $450,000 annually.

	FY02-03	FY03-04	FY04-05	FY05-06	FY06-07
# Dormitory Rooms	363	363	363	363	363
Average Occupancy Rate	57%	57%	57%	57%	57%
Estimated Total Receipts	$295,000	$395,000	$395,000	$395,000	$395,000

INCREASE MAGISTRATE SPECIAL FEES

Section 1.14 increases special fees charged by magistrates. GS 7A-309 itemizes five different special fees that may be charged by magistrates. The marriage fee was last raised in 1983 from $5 to $10. The chart below shows the current fees and the proposed increases.

Fee	Current	Proposed
Marriage Ceremony	$10	$20
Hearing petition for year's allowance	$ 4	$ 8
Taking Deposition	$ 5	$10
Proof of execution or acknowledgment of any instrument	$ 1	$ 2
Other statutory functions not incident to civil/criminal action	$ 1	$ 2

Together, these fees brought in $224,619 in FY 1999-2000 and $253,669 in FY 2000-01. Using the most recent figures, doubling each fee would double the receipts for a net gain of $253,669. With an October 1 effective date, the FY 2002-03 proceeds would be $190,251.

PART II: DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FEES

HAZARDOUS WASTE FACILITY FEES

Every facility that generates hazardous waste is required to pay a hazardous waste facility fee based on the amount of waste generated. The fee is set in statute [G.S. 130A-294.1(e) &(f)] and is currently $500 for large quantity generators (in excess of 1,000 kilograms of hazardous waste in any calendar month) and $25 for small quantity generators (between 100 to 1,000 kilograms). Sections 2.1 and 2.2 of the bill increase these fees to $750 and $37.50, respectively.

The Division of Waste Management has observed a modest reduction in number of both large and small quantity generators over the past few years due to hazardous waste production minimization efforts. The Division expects this trend to level off in the future, but believes that the number of large and small quantity generators will continue to decline by approximately 3% in each of the next five years. The charts below provide a five-year estimate of the number of facilities required to pay the fee and the incremental revenue generated by raising the fee. Note that since the effective date of this bill is October 1, there will be no additional revenue generated in FY 2002-03 because the Division of Waste Management bills facilities in July of each fiscal year.

Estimated Number of Facilities Impacted by Fee					
	FY 2002-03	**FY 2003-04**	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
# of Large Quantity Generators	493	478	464	450	436
# of Small Quantity Generators	2,098	2,035	1,974	1,915	1,857

Estimated Additional Revenue Generated by Fee Increases					
	FY 2002-03	**FY 2003-04**	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
Additional revenue generated at $750	$0	$119,553	$115,966	$112,487	$109,112
Additional revenue generated at $37.50	$0	$25,438	$24,675	$23,935	$23,217
Total Additional Revenue Generated	**$0**	**$144,991**	**$140,641**	**$136,422**	**$132,329**

FOOD AND LODGING FACILITY FEES

Currently, food and lodging facilities subject to regulation under G.S. 130A-248 pay an annual fee of $25 to the Department of Environment and Natural Resources (DENR). By statute, no more than one-third of the fees collected can be used to support the state food and lodging program. Two-thirds of the fees collected are distributed to the local food and lodging programs at the county level. Sections 2.3 and 2.4 increase the annual fee to $50. The method of collection and distribution of the fees remains the same.

Because the actual number of facilities billed annually varies from year to year, this fiscal note will use an average based on actual numbers from the two most recent years to estimate the number of facilities that will be subject to the fee increase in each of the next five years. Using an average of 26,600 food and lodging facilities, this note estimates that approximately $665,000 in additional fee revenue will be raised annually from the fee increase to $50. **Of this total amount, $221,667 will remain at the state level and $443,333 will be distributed to local programs at the county level in each of next five years.** In FY 2002-03, these totals will be reduced 25% due to the October 1 effective date.

In addition to raising the annual food and lodging fee, the bill also establishes two new fees: 1) a $200 fee that DENR may charge for plan review of franchised or chain facilities for food establishments subject to food and lodging regulation, and 2) a fee not to exceed $200 that local health departments may charge for plan review of local "mom and pop" type restaurants, whose food establishment plans not are not reviewed by the state staff.

The number of plans reviewed at the state level varies between 300 and 500 per year. The Division believes that most of this variance is due to the health of economy. When the economy is strong, franchises are expanding. When the economy is weak, franchises are less likely to expand. This fiscal note assumes that the Division will review an average of 400 plans annually in each of the next five years. At $200, the plan review fee will generate $80,000 at the state level. The additional revenue will be $60,000 in FY 2002-03 due to the October 1 effective date.

The Division estimates that approximately 1,000 plans are reviewed at the local level on an annual basis. Since the fee language is permissive and allows local health departments to charge up to $200, it is impossible to know without polling every health department which ones would take advantage of this fee setting authority and at what level they would choose to set the fee. If you assume that every health department sets the fee at $200, then the plan review fee will generate $200,000 in each of the next five fiscal years at the local level. The FY 2002-03 revenue will be $150,000 due to the October 1 effective date.

CARS ENTRY FEES AT FALLS AND JORDAN LAKES STATE RECREATION AREAS

Currently, the Division of Parks and Recreation charges a $4 entry fee to each car that enters Falls and Jordan Lakes State Recreation Areas. Section 2.5 of the bill directs the Division to adopt temporary rules to increase the car entry fee to $5. The amount of revenue generated by this fee increase is dependent on the number of cars entering each recreation area. Over the past three years, the number of cars entering Falls Lake has increased by 3% per year. At Jordan Lake, the number of cars entering decreased from FY1999 to FY 2000, but rebounded in 2001. The Division expects the number of cars entering each recreation area will continue to rise in the next few years due to a decline in travel outside the state and a greater use of state resources, like the parks. Based on past experience and assumption that North Carolina citizens will use the state recreation areas in increasingly greater numbers, this fiscal note assumes that each park will see an annual usage increase of approximately 3% in each of the next five years. The charts below provide a five-year estimate of the number of cars entering Falls and Jordan Lakes State Recreation Areas and the incremental revenue generated by raising the fee by $1.00.

Estimated Number of Cars Entering State Recreation Areas					
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Total # of cars entering Falls Lake State Recreation Area	52,564	54,141	55,765	57,438	59,161
Total # of cars entering Jordan Lake State Recreation Area	72,642	74,821	77,066	79,378	81,759

Estimated Additional Revenue Generated by Raising Fee from $4.00 to $5.00					
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Incremental Revenue Generated at Falls Lake	$39,423	$54,141	$55,765	$57,438	$59,161
Incremental Revenue Generated at Jordan Lake	$54,481	$74,821	$77,066	$79,378	$81,759
Total Additional Revenue	**$93,904**	**$128,962**	**$132,831**	**$136,816**	**$140,920**

Note: The revenue projection for the 2002-03 FY has been reduced by 25% to reflect the October 1 effective date of the bill.

PART III: DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES FEES

VETERINARY SERVICES

Sections 3.1-3.3 raise license fees for operations of pet shops, public auctions and boarding kennels, and cat and dog dealers from $50.00 to $100.00. These fees have not been changed since 1979. Since the Department has already sent the annual license renewal bills for FY 2002-03, the fee increase will not generate any additional General Fund availability until FY 2003-04. The table below reflects the total increase in revenues from all three fees.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$0	$17,650	$17,650	$17,650	$17,650

Section 3.4 raises the fee for recording of livestock brands from $25 to $50. This fee has not been increased since 1975. Section 3.9 increases the fees for public livestock market permits from $250 to $350. This fee has not been increased since 1967. This section also increases the annual renewal for public livestock market permits from $100 to $150. This fee has not been increased since 1941. Section 3.10 initiates a new fee for livestock dealers. The Department estimates that 481 licenses are issued annually. At a fee rate of $50 this fee will generate $24,050 annually. Section 3.11(a) initiates a fee for poultry/ratite dealer licenses effective January 1, 2003. The Department issues approximately 419 dealer licenses annually. At a rate of $20, this fee will generate $8,380 annually. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$40,355	$40,355	$40,355	$40,355	$40,355

Section 3.17 increases several veterinary services fees for animal disease diagnostics. These fees have not been increased since 1990 or earlier. This section also initiates fees for cytology tests and necropsy disposal. With an effective date of October 1, 2002, revenues will be 25% less for FY 2002-03 than in subsequent years. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$349,668	$466,224	$466,224	$466,224	$466,224

WEIGHT AND MEASURES

Section 3.5 (a) repeals the fee schedule for the NC Standards Laboratory. Section 3.5 (b) establishes a revised fee schedule. Since the inception date of 1992, fees charged by the Standards Lab have not increased. The Department estimates the cost of service to be $261,400 annually, while receipts for FY 2000-01 were $85,734. Even with these increases, the Standards Lab will not fully recover costs. In addition to increasing fees, the schedule has been condensed to reduce the number of fees, thereby reducing administrative time. Given the effective date of October 1, 2002, revenues would be 25% less for FY 2002-03 than in subsequent years. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$23,408	$31,210	$31,210	$31,210	$31,210

FOOD AND DRUG PROTECTION

Section 3.6 increases the inspection fees charged to wholesale and retail dairy establishments. Wholesale inspections are increased from $40 to $60 and retail inspections from $10 to $15. Neither of these fees have been increased since 1989. The increase in revenues from these two fees will be $13,260 annually. Section 3.8 (a) increases the annual registration fee for commercial non-canned pet food from $3 to $5. The Department issues 14,364 licenses each December. This increase will generate an additional $428,728 annually. Section 3.8 (b) increases the registration fee for canned pet food distributed in the state only in packages of five pounds or less. The current fee is $30. This section increases it to $45. At 3,317 annual registrations, this increase will generate an additional $49,755 annually. Sections 3.12-3.15 increases fees for licensing of pesticide dealer, applicators and consultants. The fees, which have not been increased since 1989, are increasing from $30 to $45. Section 3.14 also increases the pesticide aircraft inspection fee from $10 to $15. With the exception of the commercial feed registrations, which are renewed each December, the October 1, 2002, effective date will decrease the additional revenues generated by 25% for FY 2002-03 than in subsequent years. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$337,449	$423,798	$423,798	$423,798	$423,798

PLANT INDUSTRY

Section 3.7 increases license and inspection fees paid by seed dealers. The first fee increases the rate charged to wholesale or combined wholesale and retail seed dealers from $100 to $145. The other three increases are to retail seed dealers. There is a graduated scale, which depends on the amount of sales generated by the retailer. These fees have not been increased since 1989. The licenses are renewed each January 1, therefore, a full year's increase would be realized with an effective date of October 1, 2002. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$38,110	$38,110	$38,110	$38,110	$38,110

AGRONOMIC SERVICES

Section 3.16 initiates six new fees for soil testing and increases six existing fees. The increases were recommended by the Department to reflect the actual cost of conducting the tests. Currently, North Carolina does not charge for several types of soil testing, including testing of samples from outside the state. This new fee schedule would bring North Carolina's fees for soil testing in line with surrounding states. Due to the October 1, 2002, effective date, additional revenues generated by these new fee rates will be 25% less in FY 2002-03 than in subsequent years. The table below reflects the total increase in revenues.

Fiscal Year	2002-03	2003-04	2004-05	2005-06	2006-07
Increased Revenue	$719,298	$959,054	$959,054	$959,054	$959,054

PART IV: DEPARTMENT OF HEALTH AND HUMAN SERVICES FEES

VITAL RECORDS

Section 4.1 amends GS 130A-93.1 to increase all vital records transactions to $15.00. According to available historical information, the sale of vital records information has demonstrated healthy annual increases. However, not knowing how the fee increase will impact sales and growth, the projections are based on a modest 5% annual increase in vital records sales. FY 2002-03 revenues are adjusted for the October 1, 2002 effective date.

	2002-03	2003-04	2004-05	2005-06	2006-07
Total Transactions	122,711	128,847	135,289	142,053	149,156
Total Revenues	$1,674,253	$1,932,698	$2,029,333	$2,130,800	$2,237,340
Approximate Revenues @ current fees	$1,175,018	$1,233,769	$1,295,457	$1,360,230	$1,428,242
New Revenues	**$499,235**	**$698,929**	**$733,876**	**$770,570**	**$809,098**

NEWBORN SCREENING LABORATORY TEST FEE

The State Laboratory currently performs newborn screening tests for all children born in the State pursuant to G.S. 130A-125. Section 4.2 establishes a $10.00 fee for each test performed by the State Lab, to be charged to hospitals and birthing centers. The fee is expected to generate sufficient funds to make the Newborn Screening Program completely receipt supported. The proposed bill also allows the Department to increase the fee amount if the costs of performing each test exceed $10.00. The State Lab anticipates performing 115,000 tests in FY 2002-03. Due to the October 1, 2002 effective date, only 86,250 tests will be charged the $10 fee in FY 2002-03. The five-year projection is based on a modest annual increase in the state birth rate of 2%.

	2002-03	2003-04	2004-05	2005-06	2006-07
Total Transactions	86,250	117,300	119,646	122,039	124,480
Total Revenues	**$862,500**	**$1,173,000**	**$1,196,460**	**$1,220,389**	**$1,244,797**

PART V: SECRETARY OF STATE FEES

NOTARY PUBLIC COMMISSION FEE

Section 5.1 amends Chapter 10A of the General Statutes to increase the notary commission fee, effective October 1, 2002, from $30 to $50. This $20 increase will generate approximately $606,560 in additional revenue annually.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Notary Commission	$454,920	$606,560	$606,560	$606,560	$606,560

SECURITIES DIVISION FEES

Sections 5.2 through 5.4 adjust three Securities Division fees regarding types of securities registrations known nationally as Rule 504 and Rule 505 limited placement offerings and Rule 506 federally covered securities offered to accredited investors. The Rule 504-506 registration fees are currently set by administrative rule with statutory caps. General Statute sections 78A-17(9,17) and 78A-31(b) will be amended effective October 1, 2002, to set the respective fees at the current statutory caps of $150. The Rule 504 registration fee is currently $25; raising this fee should generate approximately $1,625 in additional revenue (13 annual registrants). The Rule 505 registration fee is currently $75; raising this fee should generate approximately $375 in additional revenue (5 annual registrants). The Rule 506 registration fee is currently $75; raising this fee should generate approximately $86,850 in additional revenue (1,158 annual registrants).

Section 5.14 amends G.S. 78A-37(b) to increase the registration fee for broker/dealers from $200 to $300. It also increases the registration fee for salesmen from $55 to $75. With 908 registered broker/dealers and 122,078 registered salesmen, the increases are expected to generate $2,664,260 annually.

Section 5.15 amends G.S. 78C-17(b) effective October 1, 2002 to increase the investment adviser representative registration fee from $45 to $75. With 13,448 representatives registered in North Carolina, this will generate approximately $403,440 in additional revenue annually.

Section 5.17 amends G.S. 78A-31(a)(4) to increase the investment company notice filing from $100 to $200 annually. This increase is expected to generate $188,400 in additional revenue annually.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
504	$1,218	$1,625	$1,625	$1,625	$1,625
505	$281	$375	$375	$375	$375
506	$65,137	$86,850	$86,850	$86,850	$86,850
Broker/Dealer	$167,025	$222,700	$222,700	$222,700	$222,700
Salesman	$1,831,170	$2,441,560	$2,441,560	$2,441,560	$2,441,560
Inv. Advisor Rep.	$302,580	$403,440	$403,440	$403,440	$403,440
Inv. Co. Notice Renewal	$141,300	$188,400	$188,400	$188,400	$188,400

CORPORATIONS DIVISION CERTIFIED DOCUMENT FEES

The Corporations Division will currently provide any requestor with a certified copy of any document on file with the Division for $5 per certificate. This includes Certificates of Existence for domestic corporations and Certificates of Authorization for foreign corporations. These certificates are available both on paper and electronically. Sections 5.5 to 5.11 increase the $5 certificate fees in GS 55-1-22(a)(25), 55-1-22(c)(2), 55A-1-22(a)(26), 55A-1-22 (c)(2), 57C-1-22(a)(24), 57C-1-22(c)(2) and 59-1106(c)(2), effective October 1, 2002, to $15 for paper certificates and $10 for electronic certificates. Division management estimates this will generate $175,000 in additional revenue annually. ($131,250 in FY 2002-03 due to October 1 effective date.)

Section 5.5 also increases the application for reserved name fee in GS 55-1-22(a)(2) from $10 to $30, the application for certificate of withdrawal fee in GS 55-1-22(a)(21) from $10 to $25, and the application for an amended certificate of authority in GS 55-1-22(a)(20) from $50 to $75. The additional revenue from these increases is expected to be $69,175, annually.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Amended Cert. Auth.	$1,650	$2,200	$2,200	$2,200	$2,200
App. Cert. Withdrawal	$15,311	$20,415	$20,415	$20,415	$20,415
App. Reserved Name	$34,920	$46,560	$46,560	$46,560	$46,560
Certificates of Existence/Authorization	$131,250	$175,000	$175,000	$175,000	$175,000

AUTHENTICATION SECTION CERTIFIED DOCUMENT FEES (FEE REDUCTION)

The Authentication Section provides authentication services on North Carolina documents that will be used in foreign countries. The Section issues apostilles, authentications and certificates (herein generically "certificates") relating to a variety of documents, including birth certificates, marriage certificates, statements of martial status, articles of incorporation, corporate bylaws, certificates of merger, powers of attorney, patent applications, trademarks, diplomas, school transcripts, deeds and assignments of interest. Recently, several countries (notably Russia and Belarus) have begun requiring that duplicate sets of authenticated documents be filed relating to adoptions. The departmental resources required to generate extra certificates relating to a single document are negligible. The current fee for authenticating a document is $10 per certificate (increased from $6.25 effective January 1, 1999). Section 5.12 amends GS 147-37 effective October 1, 2002, to reduce the certificate fee for second (and further multiple) concurrently requested certificates for foreign adoptions only from $10 to $5. Section staff estimates that this change will reduce section revenue by approximately $30,000 per year.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Authentication Certified Document	($22,500)	($30,000)	($30,000)	($30,000)	($30,000)

LOBBYIST REGISTRATION FEES

Section 5.13 amends GS 120-47.3 to increase the registration fee for lobbyists from $75 annually to $200 annually. This increase is expected to generate $113,500 annually.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Lobbyist Registration	$85,125	$113,500	$113,500	$113,500	$113,500

TRADEMARK/SERVICE MARK REGISTRATION FEES

Section 5.16 amends GS 80-3 to increase the application fee for a trademark or service mark from $50 to $75. This increase is expected to generate $14,800 in additional revenue annually.

	FY 02-03	FY 03-04	FY 04-05	FY 05-06	FY 06-07
Service Mark Reg.	$11,100	$14,800	$14,800	$14,800	$14,800

SOURCES OF DATA:

TECHNICAL CONSIDERATIONS:

MINUTES
HOUSE FINANCE COMMITTEE

July 23, 2002

The House Committee on Finance met on Thursday, July 23, 2002 in Room 544 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairmen Allen, Buchanan, Luebke and Wainwright, Vice Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cunningham, Decker, Dedmon, Edwards, Gibson, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Rayfield, Weiss, Willingham, and Womble. The following Sergeant-at-Arms staff was present: Bill Freeman, Matt Myers, Dusty Rhodes and Walter Spell. Staff including Martha Harris, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and introduced the following pages: Christy Stanford, Wayne County, sponsored by Representative Russell, Melanie Houston, Duplin County, sponsored by Representative Tucker, Robert Fenequito, Guilford County, sponsored by Representative Blust and Michael Phillips, Wake County, sponsored by Representative Miner.

Representative Holmes, bill sponsor HB 1620, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE YADKIN COUNTY AND THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, was recognized by Chairman Buchanan to explain the bill. A motion was made by Representative Jarrell to adopt the Proposed Committee Substitute for HB 1620 for discussion, motion passed. Representative Holmes gave a brief explanation of the bill. He said HB 1620 authorizes the town of Jonesville to levy a 3% room occupancy tax to go to tourism. Representative McMahan asked if there was any opposition and if not, he would move for a favorable report at the appropriate time. Representative Holmes said there was no opposition. Representative Edwards questioned if this involved the pledge from North Citizens for a Sound Economy. Representative Holmes said he knew of no opposition. Representative Jarrell was recognized to speak in favor of the bill. A vote was taken and Representative McMahan's motion passed and was given a favorable report to the Proposed Committee Substitute and unfavorable to the original bill. A copy of HB 1620, Proposed Committee Substitute, fiscal note and a summary is attached.

HB 1696 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE STATE HIGHWAY PATROL TO ASSESS AND COLLECT FEES FOR PROVIDING ESCORTS FOR OVERSIZED AND HAZARDOUS SHIPMENTS, was the next bill on the agenda for discussion. Representative Cole, bill sponsor, was recognized to explain the bill. Chairman Buchanan recognized Chairman Allen, for adoption of a Proposed Committee Substitute for HB 1696 Motion carried and Representative Cole explained that the bill amends G.S. 20 to permit the State Highway Patrol to charge a fee to cover the cost of escorting transports of oversized loads and hazardous shipments through the state and would simply restore fees that were in place until last year. This would generate $201, 410. Representative McComas asked if this included others kinds of escorts such as rail control. Chairman Buchanan recognized Major C. E. Lockley, North Carolina Highway Patrol, to address the question. Major Lockley said as far as he knew it did not involve rail. Representative McComas asked staff to prepare

an amendment to include rail. Representatives Capps asked who established the fees and why they were not included in the bill. Representative Cole said the Highway Patrol would establish the fees depending on the distant that it would cover and how many escorts were needed. Representative McComas also inquired about air. Chairman Buchanan recognized Gregg McCloud, legal counsel, of Crime Control and Public Safety to respond to the question. Mr. McCloud said the bill would allow the department to recruit costs for air and ground travel. Representative Womble asked what our sister states, Virginia, South Carolina and Georgia did. Representative Cole said he wasn't sure but we were doing this for the safety our citizens. After much discussion, Representative Jarrell made a motion to give the proposed committee substitute for HB 1696 a favorable report, unfavorable to the original bill. The motion passed and HB 1696 was given a favorable report.

The next bill to be discussed was SB 1195 A BILL TO BE ENTITLED AN ACT TO CREATE AN OCCUPANCY TAX DISTRICT IN THE TOWN OF SEVEN DEVILS, AND TO AUTHORIZE THE SEVEN DEVILS TAX DISTRICT TO LEVY AN OCCUPANCY TAX. Chairman Buchanan recognized Senator Foxx, bill sponsor to explain the bill. She explained that Seven Devils was in both Avery and Watauga County and this bill would allow the town to levy an additional three percent occupancy tax on the Watauga County side of the town. This bill was given a favorable report by the Occupancy Tax Subcommittee of the House Finance Committee. Representative Weiss made a motion to give SB 1195 a favorable report. Motion carried.

SB 1346 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF EDEN TO NEGOTIATE ANNEXATION CONTRACTS, sponsored by Senator Berger was next up for discussion. Chairman Buchanan recognized Representative Hill to move for adoption of a proposed committee substitute for SB 1346 for discussion. Senator Berger to explain the bill. SB 1346 would authorize the City of Eden to enter into a contract with Duke Power and Miller Brewing Company to accept annual payments in lieu of taxes and, as part of the contract, to agree not to annex the property described in the contract prior to December 31, 2013. Representative Alexander was recognized by Chairman Buchanan to give proposed committee substitute for SB 1346 a favorable report, unfavorable to the original bill. Motion carried.

Chairman Buchanan recognized Senator Hartsell, sponsor of SB 1160 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO PROVIDE A ONE-TIME EXTENSION TO THE TIME PERIOD IN WHICH A TAXPAYER MAY SIGN A LETTER OF COMMITMENT WITH THE DEPARTMENT OF COMMERCE TO QUALIFY FOR A LOWER TIER DESIGNATION, to explain his bill. Senator Hartsell explained section 1 allows a taxpayer that signed a letter of commitment with the Department of Commerce on or before February 28, 2002, to calculate its Bill Lee Act jobs and investment tax credits based on the location's enterprise tier and development zone designation for 2001 rather than 2002. This change would benefit taxpayers creating jobs or making eligible investments in areas whose tier designations increased for the calendar year 2002, thereby reducing magnitude of credits. Representative Capps stated according to the fiscal note the state would lose almost a million dollars. Representatives Hackney and Hurley had questions and after a brief discussion, Representative Gibson pointed out that even though the fiscal note had a deficit of $725,000, it actually would save the state money because of all the paper work involved and urged the committee to give SB 1160 a favorable report. Representative Hill was recognized to give SB 1160 a favorable report. The motion carried.

At the request of bill sponsors, Representative Thompson and Hill, HB 1736 and HB 1523 were removed from the calendar to be discussed at a later date.

Chairman Buchanan recognized Chairman Luebke for an announcement. HB 99 would be heard immediately following session today in the House Finance Committee.

The meeting adjourned the meeting at 9:20 a.m.

Respectfully submitted,

Charles Buchanan
Representative Charles Buchanan
Chairman

Glenda O Jones
Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

July 23, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1523 Amend Property Tax Laws-Representative Hill
HB 1736 Retired Legislator License Plate-Representative Thompson
HB 1696 Law Enforcement Escort Fee-Representative Cole
HB 1620 Yadkin/Jonesville Occupancy Tax-Representative Holmes
SB 1160 Revenue Laws Technical Changes-Senator Hartsell
SB 1346 Eden Annexation Contracts-Senator Berger
SB 1195 Seven Devils Occupancy Tax-Senator Foxx

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Spencer	NCDOR
Alice Worsley	NCDOR
Eddie Finch	NCDOR
Anna Pope	NCDOR
John Mathews	GA's OFFICE
Ashley Thoffelter	The Capitol Group
Jim Blackburn	NC Association of County Commissioners
[illegible]	[illegible]
MARK DALTON	NCSHP
Gary McLeod	CCPS
Pete Rodda	Forsyth Co Tax Assessor/Collector
David B. Bar	NCDOR

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Minton	NC Home Builders Assn
Ken Melton	Alley Associates, Inc.
Chris Phillips	NC Highway Patrol
W.M. Autry	NC Highway Patrol
C.E. Lockley	NC Highway Patrol
C.T. Woodard	NC Highway Patrol
John Henning	NC Bar Assoc.
	NCRA
	LBA
	CSA
	DMV

Jon Carr Jordan Price

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	Moore Van Allen
[illegible]	Progress Energy
Elizabeth Dalton	Bond Association
Jeff Lipe	Bayer
Pam Weaver	Sprint
[illegible]	Progress Energy
Shayna Wattes	lobbyist intern
[illegible]	NCAEC
Carole Lawler	EGHS
John McMillan	NFOIPA
Diana Wilkins	Mercer & Assoc.

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCCCS
[signature]	BPMLL

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1620 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE YADKIN COUNTY AND THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1620
PROPOSED COMMITTEE SUBSTITUTE H1620-CSLC-97 [v.2]

6/25/2002 10:36:41 AM

Short Title: Jonesville Occupancy Tax. (Local)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Jonesville occupancy tax. – (a) Authorization and Scope. – The Jonesville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Jonesville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jonesville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the tourism development authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Jonesville Tourism Development Authority. – (a) Appointment and Membership. – When the Jonesville Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jonesville shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jonesville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

SECTION 3. Town administrative provisions. – G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall

be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1620*

Short Title:	Yadkin/Jonesville Occupancy Taxes.	(Local)
Sponsors:	Representative Holmes.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE YADKIN COUNTY AND THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Yadkin occupancy tax. (a) Authorization and Scope. – The Yadkin County Board of Commissioners may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section is levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – Yadkin County must, on a quarterly basis, remit the net proceeds of the occupancy tax to the Yadkin Tourism Development Authority. The Authority must use at least two-thirds of the remitted funds to promote travel and tourism within the county and must use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract

tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the tourism development authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

SECTION 2. Yadkin Tourism Development Authority. – (a) Appointment and Membership. – When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the county and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the county. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Yadkin County shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

SECTION 3. County Administrative Provisions. – G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the

purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, ~~and Washington~~ Washington, and Yadkin Counties, and to the Township of Averasboro in Harnett County. "

SECTION 4. Jonesville occupancy tax. – (a) Authorization and Scope. – The Jonesville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 4.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The Town of Jonesville may contract with Yadkin County to collect and administer on behalf of the town a tax levied under this section. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 4.(c) Distribution and Use of Tax Revenue. – The Town of Jonesville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jonesville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the tourism development authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 5. Jonesville Tourism Development Authority. – (a) Appointment and Membership. – When the Jonesville Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jonesville shall be the ex officio finance officer of the Authority.

SECTION 5.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 4 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor

tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 5.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jonesville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

SECTION 6. Town administrative provisions. – G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1620:
Jonesville Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Holmes
Date:	July 23, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition H1620-CSLC-97		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 1620 authorizes the town of Jonesville to levy a 3% room occupancy tax. The tax conforms with the uniform occupancy tax provisions and was given a favorable report by the Occupancy Tax Subcommittee.***

CURRENT LAW: Currently, the town of Jonesville does not have authority to levy a room occupancy tax. Jonesville is located in Yadkin County, which also does not have authority to levy an occupancy tax.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by the House Finance subcommittee in 1993.

BILL ANALYSIS: The proposed committee substitute for House Bill 1620 authorizes the town of Jonesville to levy a room occupancy tax of up to 3%. The proceeds must be remitted to a town Tourism Development Authority (TDA), which must use two-thirds of the proceeds to promote travel and tourism and one-third for tourism-related expenditures. These administrative and use provisions conform to the uniform guidelines.

UNIFORM OCCUPANCY TAX PROVISIONS	PCS FOR HB 1620
Rate – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.	Conforms
Use – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related expenditures.	Conforms
Definitions The term "net proceeds", "promote travel and tourism", and "tourism related expenditures" are defined terms.	Conforms
Administration – The net revenues must be administered by a local tourism development authority that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the county and 1/3 of the members must be affiliated with organizations that collect the tax.	Conforms
Costs of Collection – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.	Conforms

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

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **July 19, 2002**

TO: House Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: HB 1620 – Jonesville Occupancy Taxes - PCS

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*** No General Fund Impact ***		
Jonesville	11,111	40,800	42,432	44,129	45,892

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Jonesville.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Town of Jonesville to levy a 3% room occupancy tax, and applies all the standard provisions regarding the collection and use of the funds.

ASSUMPTIONS AND METHODOLOGY: The Jonesville town management indicates that they believe a 3% room tax would generate approximately $40,000 per year, for a full year. However, he also indicated that the town expects to initiate the tax at 1%. This analysis assumes that the town gleans 10 months of revenue during this fiscal year, at 1%, and then increases the tax to the maximum amount of 3%. Additionally, the 4% annual

growth rate in hotel/motel sales from the US Census Bureau is used to inflate out year projections, although a 2% figure is used for the first year's growth, because of the recent economic slowdown. Actual growth will vary with construction plans and other local trends.

SOURCES OF DATA: Town of Jonesville and US Census Bureau.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1696 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE STATE HIGHWAY PATROL TO ASSESS AND COLLECT FEES FOR PROVIDING ESCORTS FOR OVERSIZED AND HAZARDOUS SHIPMENTS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1696
PROPOSED COMMITTEE SUBSTITUTE H1696-CSLAf-77 [v.1]

7/22/2002 3:59:46 PM

Short Title: Law Enforcement Escort Fee. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE HIGHWAY PATROL TO ASSESS AND COLLECT FEES FOR PROVIDING ESCORTS FOR OVERSIZED AND HAZARDOUS SHIPMENTS ONLY WHEN REQUESTED BY THE SHIPPER OR WHEN REQUIRED BY LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-196.4. Oversized and hazardous shipment escort fee.**

(a) Every person, firm, corporation, or entity required by the North Carolina Department of Transportation or any federal agency or commission to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized load or hazardous load, shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(b) If the State Highway Patrol provides an escort to any person, firm, corporation, or entity requesting an escort to accompany the transport of oversized loads or hazardous shipments, then the requester shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(c) The Department of Crime Control and Public Safety shall establish fees to carry out this section."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

HOUSE BILL 1696

Short Title:	Law Enforcement Escort Fee.	(Public)
Sponsors:	Representative Cole.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE HIGHWAY PATROL TO ASSESS AND COLLECT FEES FOR PROVIDING ESCORTS FOR OVERSIZED AND HAZARDOUS SHIPMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-167.2. Oversized and hazardous shipment escort fee.**

(a) Every person, firm, corporation, or entity required by any statute to have a law enforcement escort provided by the State Highway Patrol for the transport of any oversized or hazardous load, shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State.

(b) If the State Highway Patrol provides an escort to any person, firm, corporation, or entity requesting an escort to accompany the transport of oversized loads or hazardous shipments, then the requester shall pay to the Department of Crime Control and Public Safety a fee covering the full cost to administer, plan, and carry out the escort within this State."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1696 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.) McComas
)
Sen.)

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by adding the following phrase before the comma ,
"by ~~[illegible]~~ road or rail" ;

and on page 1, line 18 by adding the following phrase before the comma:
" by road or rail

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1696:
Law Enforcement Escort Fee

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Cole
Date:	July 22, 2002	**Analysis by:**	Martha Walston
Version:	H1696-CSLAf-77		Committee Counsel

SUMMARY: House Bill 1696 amends Chapter 20 to require a person or entity to pay a fee to the Department of Crime Control and Public Safety to cover the cost of a State Highway Patrol escort for the transport of any oversized or hazardous load in the State if:

(1) an escort is required by the North Carolina Department of Transportation or by any federal agency or commission, or

(2) an escort is requested.

The Department of Crime Control and Public Safety must establish fees to carry out this act.

CURRENT LAW: The Department of Transportation is authorized by rule to require escort vehicles to accompany oversize and overweight loads. The weight, width of load, width of pavement, height, length of combination, length of overhang, maximum speed of vehicle, geographical route of travel, weather conditions and restricted time of travel must be considered to determine escort requirements. Currently the DOT may require highway patrol escort for certain loads that exceed 15 feet in width depending upon the commodity shipped and the route traveled, loads that exceed 16 feet 5 inches in height traveling on any road, and super loads. A super load is one that exceeds 132,000 pounds gross weight or exceeds 15 feet in width.

Under the current practice, when the DOT issues a permit for an oversized shipment and requires a highway patrol escort, DOT conditions issuance of the permit upon agreement that the permit recipient will reimburse the State Highway Patrol for the costs of the escort.

Last Session, the General Assembly enacted S.L. 2001-427, which prohibited an agency from establishing or increasing a fee or charge unless, the General Assembly has set the fee or charge amount and its purpose by statute, or has given the agency general authority to establish or increase a fee or charge by statute and the agency has consulted with the Joint Legislative Commission on Governmental Operations before establishing or increasing that fee or charge.

BILL ANALYSIS: The proposed committee substitute amends Article 4 (State Highway Patrol) of the Motor Vehicles Chapter to require a person or entity to pay a fee to the Department of Crime Control and Public Safety under the following circumstances:

1. When the person or entity is required by the North Carolina Department of Transportation or by any federal agency or commission to have the State Highway Patrol escort the transport of any oversized or hazardous load.

2. When the person or entity requests the State Highway Patrol to escort an oversized load or hazardous shipment.

The fee will cover the full cost to administer, plan, and carry out the escort within the State

Since September 11, the State Highway Patrol has received an increase in the number of requests from private corporations to provide escorts for hazardous materials shipments.

The proposed committee substitute also requires the Department of Crime Control and Public Safety to establish fees to carry out this section.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1696 (1st Edition)

SHORT TITLE: Law Enforcement Escort Fee

SPONSOR(S): Rep. Cole

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES	$ 201,410	$ 201,410	$ 201,410	$ 201,410	$ 201,410
EXPENDITURES	$ 201,410	$ 201,410	$ 201,410	$ 201,410	$ 201,410
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Crime Control and Public Safety: State Highway Patrol

EFFECTIVE DATE: Act becomes effective when it becomes law

BILL SUMMARY: Amends G.S. 20 to permit the State Highway Patrol to charge a fee to cover the cost of escorting transports of oversized loads and hazardous shipments through the state.

ASSUMPTIONS AND METHODOLOGY: The State Highway Patrol currently provides escorts for transports of oversized loads and hazardous material shipments through the state. While automobiles are used for most escorts, helicopters may be used for some hazardous material shipments transported by train. Note that the use of aircraft for the hazardous material escorts is a fairly recent requirement arising from the events of September 11. The federal government issued guidance advising states to strengthen security measures related to hazardous material transports, including the recommendation to provide aircraft escorts of cargo trains transporting nuclear or other hazardous materials. The first of these hazardous escorts using aircraft occurred in December 2001.

Data provided by the Highway Patrol for the period January 2001 through June 2002 was used to determine the averages for escorts provided each month as indicated in the following table:

Type of Escort	Number of Escorts per Month	Number of Staff Hours per Escort	Miles Driven Per Escort	Number Aircraft Hours per Escort	Meal Cost
Oversized Load	169	1.25	31	N/a	N/a
Hazardous Materials (without aircraft)	2	24	336	N/a	$ 43.40
Hazardous Materials (with aircraft)	2	13	434	4.7	$ 21.33

The costs incurred by the Highway Patrol include hourly salary and benefits cost, fuel costs for the vehicles, and, if applicable, meal reimbursements. In the case of helicopter escorts, the Highway Patrol also incurs aircraft cost, an hourly operating rate that includes both personnel and non-salary related operating costs. The aircraft rate is based upon the "public rate" calculated by the U.S. Department of Defense for an OA-58 helicopter. The rates are:

Personnel (salary and benefits)	$ 28.38/hour
Vehicle	$ .38/mile
Aircraft	$ 643.94/hour
Meals (state approved rate)	$ 6.50/breakfast $ 8.50/lunch $ 14.50/dinner

The data for the period January 2001 through June 2002 was used to project the number of escorts to be provided in Fiscal Year 2002-03 and beyond. Assuming no change in the number of escorts required, the Highway Patrol is projected to provide 2,028 oversized load escorts and 48 hazardous shipment escorts for a total of 2,076 annually. About one-half of the hazardous shipment escorts will require the use of aircraft. Using current rates for staff (vehicle, meal, and aircraft) it is estimated the annual cost to the Highway Patrol to provide escorts for 2,076 oversized and hazardous shipments will be $201,410.

SOURCES OF DATA: Research and Evaluation Section, State Highway Patrol Division, Department of Crime Control and Public Safety.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Denise Thomas

APPROVED BY: James D. Johnson

DATE: July 22, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1195 A BILL TO BE ENTITLED AN ACT TO CREATE AN OCCUPANCY TAX DISTRICT IN THE TOWN OF SEVEN DEVILS, AND TO AUTHORIZE THE SEVEN DEVILS TAX DISTRICT TO LEVY AN OCCUPANCY TAX.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

SENATE BILL 1195

Short Title:	Seven Devils Occupancy Tax.	(Local)
Sponsors:	Senators Foxx; Berger, Garwood, and Moore.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE AN OCCUPANCY TAX DISTRICT IN THE TOWN OF SEVEN DEVILS, AND TO AUTHORIZE THE SEVEN DEVILS TAX DISTRICT TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) District W Created. – Seven Devils District W is created as a taxing district. Its jurisdiction consists of that part of the Town of Seven Devils that is located in Watauga County. Seven Devils District W is a body politic and corporate and has the power to carry out the provisions of this section. The Seven Devils Board of Aldermen shall serve ex officio as the governing body of the district, and the officers of the board of aldermen shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 1.(b) Authorization and Scope. – The governing body of Seven Devils District W may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215 as if Seven Devils District W were a town. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

All persons, firms, corporations, and associations who rent either their own dwelling or dwellings or rooms for other persons are required to submit to the district a list of all rental properties. This list must include the owner's name, current address, and

location of rental property. The list must be submitted semiannually on or before November 30 and May 30. Failure to file this list subjects the person, firm, corporation, or association to a civil penalty.

SECTION 1.(d) Distribution and Use of Tax Revenue. – Seven Devils District W shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Seven Devils Tourism Development Authority created in accordance with Part XVI of S.L. 2001-439. The Seven Devils Tourism Development Authority shall use the tax proceeds remitted to it under this act for the purposes provided in Part XVI of S.L. 2001-439. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Seven Devils District W.

For the purposes of this section, "net proceeds" means gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

SECTION 2. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the

preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District ~~W,~~ W and Seven Devils District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

SENATE BILL 1195:
Seven Devils Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Foxx
Date:	July 23, 2002	**Summary by:**	Trina Griffin*
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1195 creates the Seven Devils District W and allows the town to levy an additional three percent (3%) occupancy tax on the Watauga County side of the town. This bill was given a favorable report by the Occupancy Tax Subcommittee of the House Finance Committee.***

CURRENT LAW: The Town of Seven Devils is located in both Avery County and Watauga County. Under current law, the Town of Seven Devils has the authority to levy up to a 3% occupancy tax (S.L. 2001-439, Part XVI).

BILL ANALYSIS:

Seven Devils District W. Senate Bill 1195 creates a new Seven Devils District W consisting of the part of the Town of Seven Devils that is located in Watauga County. The Seven Devils Board of Alderman serve ex officio as the governing body of the district and the officers of the board of aldermen serve as the officers of the governing body.

Occupancy Tax Levy & Use. The district is authorized to levy an occupancy tax of up to 3% subject to the uniform administrative provisions in G.S. 160A-215. The proceeds of the occupancy tax must be remitted quarterly to the Seven Devils TDA to be used as provided in Part XVI of S.L. 2001-439 with 2/3 to promote travel and tourism and 1/3 for tourism-related expenditures. However, the additional proceeds from the district may be used only for the direct benefit of the Seven Devils District W.

	TOWN OF SEVEN DEVILS OCCUPANCY TAX	
	Avery County Portion of Town	**Watauga County Portion of Town**
Current Occupancy Tax Rate	3%	3%
Proposed Occupancy Tax Rate	No Change	**Add'l 3%**
TOTALS	No Change to Current 3%	**6% total**

BACKGROUND: The Town of Beech Mountain is also located in both Avery County and Watauga County. In 2001, the General Assembly also created a new taxing district consisting of the part of the Town of Beech Mountain located in Watauga County [S.L. 2001-434, Part V]. The Beech Mountain District W also has the authority to levy an additional 3% occupancy tax in that portion of the town.

*Mary Shuping, committee staff to Senate Finance, substantially contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1195 (First Edition)

SHORT TITLE: Seven Devils Occupancy Tax

SPONSOR(S): Senator Foxx

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Seven Devils	$61,000	$73,000	$73,000	$73,000	$73,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Seven Devils Tourism Development Authority

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation will create an occupancy tax district in the Town of Seven Devils with the authorization to levy an occupancy tax in Watauga County. The governing body of Seven Devils District W will be the members of the Seven Devils Board of Aldermen. The governing body may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax. This is in addition to any existing state or local sales or room occupancy tax. The net proceeds shall be remitted to the Seven Devils Tourism Development Authority.

BACKGROUND: The Town of Seven Devils has requested a 6% occupancy tax rate. The General Assembly Bill Drafting Division found that the town already had the authority under current law to levy a 3% occupancy tax throughout the town; however, the town did not realize this and has not been collecting this revenue. The proposed legislation would add an additional 3% occupancy tax in the Watauga County portion of the town, raising its occupancy tax rate to the requested 6%. This gives the Seven Devils District W the same occupancy tax authority as its neighbor, Beech Mountain District W. The Avery County portion of Seven Devils will maintain its current 3% occupancy tax rate.

ASSUMPTIONS AND METHODOLOGY: All fees and revenues generated by the town remain with the town, thus the bill will have no fiscal impact on the state General Fund. However, the legislation will have an impact on the revenues of the town.

The Town of Seven Devils does not have any hotels or bed and breakfasts. Instead, tourism revenue is generated via the rental of condos, cabins and personal residences. It is estimated that approximately 125 rental units are present in the Watauga County portion of Seven Devils. The units are rented out at an average of $750 a week with an approximate 50% occupancy rate for the year (predominately summer and winter). This would generate approximately $2.4 million a year in rental income.

Recent years have seen fluctuations in rental occupancy rates, as they are very dependent on personal income changes and consumers' ability to take vacations. Assuming no tourism growth, the additional 3% occupancy tax on $2.4 million rental income would generate approximately $73,000 annually.

SOURCES OF DATA: Eric Davis, Seven Devils Town Manager; High Country Realty

TECHNICAL CONSIDERATIONS: The estimate for fiscal year 2002-03 assumes a two-month lag time before collections will begin. The legislation will not pass before July 1, 2002, and although the town plans to implement the occupancy tax as soon as it becomes law, there will be at least a month's set up time.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 26, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1346 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF EDEN TO NEGOTIATE ANNEXATION CONTRACTS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the HOUSE 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1346
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1346-CSSV-71 [v.2]

7/22/2002 4:45:47 PM

Short Title: Eden Annexation Contracts. (Local)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF EDEN TO NEGOTIATE ANNEXATION CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. The City of Eden may, by contract, provide that certain property described in the contract may not be annexed by the City under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to December 31, 2013. Nothing in this act impairs the right of the General Assembly to annex any such property by specific local act.

SECTION 2. The City of Eden may accept, as consideration for such contract, "Payments in lieu of taxes".

SECTION 3. Payments in lieu of taxes under this act shall be annually computed based upon the tax valuations of the properties subject to contracts under Section 1 of this act as determined by the Rockingham County Tax Department, with the formula for making the computation being stated in each contract.

SECTION 4. Contracts under Section 1 of this act apply only to the following described properties:

DUKE POWER

Tract 1

Beginning at a concrete monument set in the westerly line of S. R. # 1779 (Edgewood Road) and running thence from said beginning point, S 36 deg. 45 min. E 80.6 feet to a stake, thence N 69 deg. 26 min. E 826.6 feet to an iron rod found; thence N 20 deg. 32 min. W 239.7 feet to an iron rod; thence N 69 deg. 28 min. E 97.1 feet to an iron rod found; thence N 20 deg. 39 min. W 180.0 feet to an iron rod found; thence N 69 deg. 18 min. E 54.7 feet to a concrete monument found; thence N 20 deg. 30 min. W 240.4 feet to an iron rod; thence N 69 deg. 30 min. E 87.0 feet to an iron rod found; thence N 20

deg. 35 min. W 180.1 feet to an iron rod found; thence N 69 deg. 27 min. E 515.5 feet to an iron rod and iron pipe found in the westerly boundary of the property of Fieldcrest Mills, Inc.; thence with said property line S 10 deg. 19 min. E 1390.2 feet to a concrete monument found in the southwesterly corner of the property of Fieldcrest Mills, Inc.; thence with the southerly line of Fieldcrest Mills, Inc., N 79 deg. 03 min. E 161.9 feet to a concrete monument found; thence S 80 deg. 53 min. E 1126.3 feet to an iron rod found in the centerline of the CNW Railroad spur track; thence with the centerline of said Spur track the following courses and distances: S 4 deg. 02 min. E 100.0 feet to a point; S 0 deg. 02 min. E 99.9 feet to a point; S 4 deg. 04 min. W 100.0 feet to a point; S 7 deg. 43 min. W 100.0 feet to a point; S 11 deg. 45 min. W 100.0 feet to a point; S 15 deg. 57 min. W 100.0 feet to a point; S 20 deg. 00 min. W 100.0 feet to a point; S 24 deg. 15 min. W 100.0 feet to a point; S 28 deg. 05 min. W 100.0 feet to a point; S 31 deg. 33 min. W 72.0 feet to a spike found; thence N 88 deg. 54 min. E 623.1 feet to an iron rod found; thence S 18 deg. 36 min. E 367.2 feet to an iron pipe found; thence S 6 deg. 02 min. W 74.9 feet to an iron pipe found; thence S 24 deg. 38 min. E 141.5 feet to a point in the northerly bank of the Dan River; thence with the Dan River the following courses and distances: S 66 deg. 35 min. W 48.8 feet; S 54 deg. 44 min. W 77.0 feet; S 61 deg. 37 min. W 108.8 feet; S 55 deg. 43 min. W 74.6 feet; S 53 deg. 05 min. W 203.1 feet; S 32 deg. 02 min. W 281.5 feet; S 27 deg. 20 min. W 140.7 feet; S 27 deg. 58 min. W 436.3 feet; S 29 deg. 28 min. W 142.1 feet; S 26 deg. 31 min. W 236.2 feet; S 41 deg. 30 min. W 204.0 feet; S 52 deg. 38 min. W 266.5 feet; S 58 deg. 31 min. W 263.2 feet; S 63 deg. 40 min. W 317.8 feet; S 57 deg. 38 min. W 75.4 feet; S 65 deg. 46 min. W 312.0 feet; S 71 deg. 46 min. W 148.1 feet; S 75 deg. 07 min. W 232.9 feet; S 76 deg. 21 min. W 205.8 feet; N 6 deg. 55 min. W 64.0 feet; S 68 deg. 04 min. W 235.4 feet; S 17 deg. 07 min. E 61.4 feet; S 66 deg. 21 min. W 108.2 feet; S 67 deg. 33 min. W 318.2 feet; S 68 deg. 11 min. W 220.3 feet; S 70 deg. 06 min. W 139.5 feet; S 78 deg. 35 min. W 234.8 feet; S 65 deg. 10 min. W 88.2 feet to a point in the southeasterly margin of the property of Fieldcrest Mills, Inc.; thence with the property line of Fieldcrest Mills, Inc.; N 18 deg. 51 min. W 176.4 feet to an iron rod set; thence S 56 deg. 26 min. W 96.7 feet to an iron pipe found; thence N 19 deg. 06 min. W 1090.1 feet to a concrete monument found; thence N 82 deg. 22 min. E 247.0 feet to a point in the westerly bank of a pond; thence with the westerly bank of said pond, eight courses and distances as follows: (1) N 46 deg. 33 min. W 98.7 feet; (2) N 32 deg. 44 min. W 86.0 feet; (3) N 47 deg. 00 min. W 82.7 feet; (4) N 84 deg. 22 min. W 45.6 feet; (5) N 39 deg. 52 min. W 147.9 feet; (6) N 18 deg. 33 min. W 89.6 feet; (7) N 7 deg. 38 min. E 206.9 feet; (8) N 36 deg. 54 min. E 60.4 feet at an intersection of the said pond and Moir Branch; thence with the centerline of Moir Branch the following courses and distances: (1) N 22 deg. 07 min. W 200.2 feet; (2) N 25 deg. 40 min. W 40.5 feet; (3) N 45 deg. 48 min. W 58.0 feet; (4) N 11 deg. 08 min. W 47.0 feet; (5) S 79 deg. 32 min. E 37.3 feet; (6) N 4 deg. 09 min. E 25.0 feet; (7) N 6 deg. 39 min. W 132.1 feet; (8) N 5 deg. 28 min. E 193.7 feet; (9) N 7 deg. 04 min. W 76.1 feet; (10) S 30 deg. 57 min. W 48.8 feet; (11) S 73 deg. 25 min. W 18.4 feet; (12) N 15 deg. 37 min. W 44.9 feet; (13) N 3 deg. 35 min. E 122.1 feet; (14) N 3 deg. 20 min. W 34.8 feet; (15) N 14 deg. 01 min. W 129.2 feet; (16) N 50 deg. 22 min. W 61.7 feet; (17) N 22 deg. 47 min. W 85.8

feet; (18) N 34 deg. 56 min. W 29.7 feet; (19) N 4 deg. 25 min. E 177.2 feet; (20) N 16 deg. 48 min. E 54.7 feet; (21) N 30 deg. 16 min. E 28.2 feet; (22) N 18 deg. 14 min. W 25.5 feet; (23) N 13 deg. 26 min. W 47.0 feet; (24) N 4 deg. 41 min. E 115.3 feet; (25) S 89 deg. 12 min. E 26.5 feet; (26) N 41 deg. 02 min. E 26.5 feet; (27) N 9 deg. 00 min. W 94.8 feet; (28) N 1 deg. 43 min. W 62.0 feet; (29) N 40 deg. 28 min. E 15.7 feet; (30) N 22 deg. 50 min. E 46.8 feet; (31) N 11 deg. 42 min. E 37.1 feet; (32) S 82 deg. 45 min. E 40.0 feet; (33) N 16 deg. 55 min. E 45.3 feet; (34) N 21 deg. 40 min. E 37.9 feet; (35) N 6 deg. 31 min. E 114.3 feet to a point in the southerly line of the property of Fieldcrest Mills, Inc.; thence with the southerly line of said property N 63 deg. 10 min. E 308.3 feet to an iron pipe found; thence N 63 deg. 14 min. E 523.5 feet to an iron pipe found; thence N 63 deg. 07 min. E 132.1 feet to an iron pipe found; N 63 deg. 20 min. E 171.2 feet to an iron pipe found; thence N 63 deg. 13 min. E 357.6 feet to the point of beginning, containing 371.48 acres.

Tract 2

Beginning at a point on the west bank of Miry Branch at the confluence of Miry Branch and Dan River, thence with the west branch of Miry Branch the following courses and distances: S 33 deg. 39 min. W 85.4 feet; S 57 deg. 48 min. W 80.0 feet; S 30 deg. 56 min. W 51.1 feet; S 14 deg. 24 min. E 36.7 feet; S 43 deg. 41 min. E 74.3 feet; S 1 deg. 31 min. W 72.2 feet; S 6 deg. 51 min. W 117.5 feet; S 5 deg. 17 min. W 37.8 feet; S 45 deg. 12 min. W 74.0 feet; S 41 deg. 15 min. W 117.0 feet; S 31 deg. 11 min. W 36.9 feet; S 15 deg. 35 min. E 72.8 feet; S 31 deg. 08 min. W 52.5 feet; S 24 deg. 33 min. E 44.3 feet; S 24 deg. 09 min. W 94.6 feet; S 7 deg. 15 min. W 35.1 feet; S 36 deg. 54 min. E 71.5 feet to an iron rod; thence S 72 deg. 11 min. W 395.3 feet to a concrete monument found; thence N 2 deg. 25 min. E 917.1 feet to the southerly line of said river; thence with the southerly bank of Dan River three calls as follows: N 70 deg. 00 min. E 336.4 feet; N 69 deg. 52 min. E 115.1 feet; N 79 deg. 21 min. E 154.5 feet to the point of beginning, containing 9.08 acres.

Miller Brewing Company

TRACT I

Being a tract of land 1357.79 acres, more or less, in Leaksville Township, Rockingham County, North Carolina, bounded by Meadow Road (NC State Road #770) and property owned by Spray Cotton Mills, Inc., on the South; Summit Road, property owned by Powell, Henry Raefield on the West; property owned by Herbert Hopper, Joe Scales, and the Virginia State Line on the North; and, Main Street, property owned by Lawson, Lacy Hall, Herman Patterson, Slayton and Cedrick Willard on the East; and more specifically described as follows:

BEGINNING at an iron stake in the North Margin of the right of way of Eastern Street (State Road #1774) at the Southwest corner of property owned by W. Smart, said

beginning point also being situate at the Easternmost corner of property conveyed to Spray Cotton Mills, Inc., in Deed Book 694, Page 902, Rockingham County Public Registry; running thence from said beginning point the following calls along the East line of the Spray Cotton Mills property: North 23 deg. 53 min. West 133.01 feet; North 37 deg. 21 min. West 159.23 feet; North 23 deg. 19 min. West 154.10 feet; and North 9 deg. 52 min. West 394.73 feet to a point situated at the Northeast corner of the Spray Cotton Mills, Inc. property; thence with the North line of the Spray Cotton Mills, Inc. property, South 78 deg. 53 min. West 792.12 feet and South 85 deg. 26 min. West 1,281.15 feet to the Northwest corner of the Spray Cotton Mills, Inc. property; thence continuing with the Spray Cotton Mills, Inc. West line, South 0 deg. 52 min. West 867.34 feet to a point; thence South 73 deg. 15 min. West 415.79 feet to a point; thence South 16 deg. 45 min. East 1300 feet to a point in the northern margin of Meadow Road (N.C. State Road 770); thence with the northern margin of Meadow Road the following courses and distances: South 73 deg. 14 min. 40 sec. West 2362.50 feet; South 74 deg. 26 min. 10 sec. West 186.96 feet; South 80 deg. 5 min. 20 sec. West 210.67 feet; South 84 deg. 16 min. 30 sec. West 646.55 feet; and, South 83 deg. 53 min. West 336.01 feet to an iron in the North margin of the right of way of said Meadow Road; thence leaving the North margin of the right of way of Meadow Road and turning in a northern direction, North 3 deg. 37 min. 20 sec. West 605.50 feet to an iron stake in the East line of Jarrett; thence continuing with Jarrett's East line, North 4 deg. 38 min. 50 sec. East 470 feet to an iron; thence North 5 deg. 58 min. 20 sec. East 591 feet to an iron at the Northeast corner of property owned by Jarrett; thence with Jarrett's North line, North 89 deg. 22 min. 50 sec. West 974.50 feet to an iron in the East margin of the right of way of Summit Road, Jarrett's Northwest corner; thence with the East right of way line of Summit Road, North 10 deg. 01 min. 20 sec. West 239.45 feet and North 26 deg. 45 min. 50 sec. West 99.93 feet to a point in the East margin of the right of way of Summit Road at Pulliam's Southwest corner; thence with Pulliam's South line, North 63 deg. 13 min. 10 sec. East 300 feet to an iron stake at Pulliam's Southeast corner; thence with Pulliam's East line, North 26 deg. 46 min. West 129.71 feet to a point at the Southwest corner of property conveyed to Northwestern Engineering Corporation in Book 694, Page 772; thence with the South line of Northwestern Engineering Corporation, North 46 deg. 15 min. 51 sec. East 280 feet to a point; thence with Northwestern Engineering Corporation's East line, North 38 deg. 20 min. West 300 feet to a point in the South right of way of an unnamed street dedicated in Book 685, Page 840, Rockingham County Public Registry; thence with the South right of way line of said unnamed street and with the North line of Northwestern Engineering Corporation, South 47 deg. 6 min. 34 sec. West 280 feet to the northwest corner of the Northwestern Engineering Corporation; thence along the western line of Northwestern Engineering Corporation, South 38 deg. 33 min. East 224.32 feet to a point, corner with Pulliam, thence with the line of Pulliam, South 51 deg. 54 min. West 299.77 feet to a point in the eastern margin of Summit Road; thence with the eastern margin of Summit Road, North 38 deg. 22 min. West 199.30 feet to a point in the southern margin of the unnamed street referred to above; thence continuing along the eastern margin of Summit Road across said unnamed street, North 44 deg. 10 min. West 60.01 feet to a point; thence still with the

eastern margin of Summit Road, North 47 deg. 2 min. West 199.18 feet to a point, corner with Powell; thence with the line of Powell, North 44 deg. 38 min. 50 sec. East 293.38 feet to a point, the northwest corner of the property conveyed to Southeastern Warehousing Distribution Center by deed recorded in the Rockingham County Registry in Book 685, Page 841; thence with the line of Southeastern Warehousing Distribution Center, South 46 deg. 51 min. East 211.7 feet to a point in the northern margin of said unnamed street; thence with the northern margin of said unnamed street, North 47 deg. 6 min. 34 sec. East 637.67 feet to a point, the southeast corner of Southeastern Warehousing Distribution Center; thence North 43 deg. 53 min. 26 sec. West 397.68 feet with the East line of the Southeastern Warehousing property to a point; thence North 88 deg. 23 min. 10 sec. West 442.49 feet with the North line of the Southeastern Warehousing property to a point in the East line of property owned by Powell; thence with Powell's East line, North 8 deg. 45 min. West 859.33 feet to an old set stone, corner with property formerly owned by W. B. Light; thence with Light's East line, North 16 deg. 30 min. 10 sec. West 1230.19 feet to an iron & monument; thence North 14 deg. 50 min. 40 sec. West 1082.81 feet to an iron & monument found, corner with Henry Raefield; thence with Raefield's East line, North 16 deg. 01 min. 50 sec. West 336.06 feet to an iron stake; thence turning in an easterly direction, North 80 deg. 33 min. 30 sec. East 317.69 feet to an iron stake; North 80 deg. 48 min. 10 sec. East 267.03 feet to an iron stake; South 87 deg. 59 min. East 265.93 feet to an iron; thence North 2 deg. 1 min. East 581.28 feet to an iron within the right of way line of N.C. State Road #1715; thence a line within the right of way of N.C. State Road #1715, South 87 deg. 58 min. East 520.71 feet to a point and South 81 deg. 3 min. East 203.10 feet to an iron; thence North 81 deg. 47 min. East 508.30 feet to an iron, corner with Herbert Hopper; thence with Hopper's South line, South 40 deg. 59 min. East 242.22 feet to an iron and North 77 deg. 26 min. East 669.10 feet to an iron; thence continuing with Hopper's South line, North 30 deg. East 600.70 feet to an iron stake, Hopper's Southeast corner and Joe Scales' Southwest corner; thence with Scales' South line, North 80 deg. 28 min. 10 sec. East 657.76 feet to a post oak and North 73 deg. 36 min. 40 sec. East 1874.50 feet to an iron stake, corner with Joe Scales; thence with Scales' East line, North 4 deg. 58 min. 20 sec. East 589.17 feet to a white oak; thence North 64 deg. 0 min. 40 sec. East 544 feet to an iron stake; thence North 8 deg. 5 min. 30 sec. West 532 feet to an iron stake, corner with Joe Scales in the North Carolina-Virginia State Line; thence with the North Carolina - Virginia State Line, South 86 deg. 39 min. 10 sec. East 3654.49 feet to an iron stake in said State Line, corner with property owned by Cedrick and Maria P. Willard; thence with Willard's West line, South 4 deg. 27 min. East 1756.47 feet to an iron stake, Slayton's Northeast corner; thence with Slayton and Herman Patterson's North lines, South 85 deg. 33 min. 20 sec. West 497.30 feet to an iron stake; thence South 3 deg. 23 min. 30 sec. West with Herman Patterson's West line, 1313.85 feet to an iron stake; thence with Lacy Hall's West line, South 3 deg. 0 min. 10 sec. West 759.38 feet to an iron stake, Lacy Hall's Southwest corner and Lawson's Northwest corner; thence with Lawson's West line, South 0 deg. 25 min. 20 sec. West 1069.67 feet to an iron stake, Lawson's Southwest corner and Harris' Northwest corner; thence with Harris' West line, South 4 deg. 21 min. 10 sec. East 267 feet to an iron stake in the

North right of way line of Findowrie street; thence with the Northern terminus line of Main Street, South 85 deg. 38 min. 50 sec. West 63.16 feet to a point; thence continuing with the West right of way line of Main Street, South 4 deg. 21 min. 10 sec. East 840.03 feet to an iron stake; thence leaving the West right of way line of Main Street, South 85 deg. 34 min. 40 sec. West 300 feet to an iron stake and South 4 deg. 25 min. 20 sec. East 150.23 feet to an iron stake; thence South 85 deg. 34 min. 40 sec. West 125 feet to a point and South 4 deg. 25 min. 20 sec. East 400 feet to an iron stake at W. Smart's Northeast corner; thence with Smart's North line, South 85 deg. 34 min. 10 sec. West 821 feet to an iron stake at Smart's Northwest corner; thence with Smart's West line, South 4 deg. 25 min. 20 sec. East 350 feet to an iron stake in the North right of way line of Eastern Street at the easternmost corner of property conveyed to Spray Cotton Mills, Inc., in Book 694, Page 902, Rockingham County Public Registry, the point and place of BEGINNING, containing 1357.79 acres, more or less, as shown on plat of survey by Shanks and Wilmarth, Engineers & Surveyors, dated December 2, 1975, File No. C-1034, and revised on May 20, 1976, and being the same property shown on Map Book 13, Page 28, Rockingham County Public Registry.

SAVE AND EXCEPT THEREFROM the 5.175 acres conveyed by Miller Brewing Company to Evans Warehouse, Inc. by deed recorded in Book 840, Page 2264, in the Rockingham County Public Registry.

TRACT II

Being a tract of 7.489 acres, more or less, in Leaksville Township, Rockingham County, North Carolina, and more specifically described as follows:

Commencing at an iron in the easterly margin of Summit Road, which iron is the Southwest corner of Powell and the Northwest corner of Lot I as shown on map hereinafter referred to; thence with the said margin of Summit Road South 47 deg. 01 min. 51 sec. East 199.18 ft. to an iron where said Summit Road is intersected by the northerly margin of a 60 ft. wide unnamed street; thence with said margin of said unnamed street North 47 deg. 06 min. 34 sec. East 300 ft. to a point, the POINT OF BEGINNING; thence leaving the said unnamed street North 46 deg. 54 min. 39 sec. West 220.39 ft., more or less, to Powell's line; thence with Powell's line North 08 deg. 45 min. West 589.63 feet to an iron; thence leaving Powell South 88 deg. 23 min. 10 sec. East 442.49 ft. to an iron; thence South 42 deg. 53 min. 26 sec. East 397.68 ft. to an iron in the northerly margin of the aforementioned unnamed street; thence with the said margin of the said unnamed street, South 47 deg. 06 min. 34 sec. West 631.05 ft. more or less to the point of beginning, containing 7.489 acres, more or less, and being a portion of Lot 2 as shown on Plat of Survey for Homer E. Wright, Jr., dated September 20, 1972, by E. L. Wilmarth, the said survey being recorded with a certain deed from W. P. Bickham, Trustee, et als. to Thomas S. Harrington, Trustee, dated February 6, 1973, which deed was recorded in the office of the Register of Deeds for Rockingham County.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1346

Short Title:	Eden Annexation Contracts.	(Local)
Sponsors:	Senators Berger; and Foxx.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF EDEN TO NEGOTIATE ANNEXATION CONTRACTS.

The General Assembly of North Carolina enacts:

SECTION 1. The City of Eden may, by contract, provide that certain property described in the contract may not be annexed by the City under Parts 2 or 3 of Article 4A of Chapter 160A of the General Statutes prior to December 31, 2013. Nothing in this act impairs the right of the General Assembly to annex any such property by specific local act.

SECTION 2. The City of Eden may accept, as consideration for such contract, "Payments in lieu of taxes".

SECTION 3. Payments in lieu of taxes under this act shall be annually computed based upon the tax valuations of the properties subject to contracts under Section 1 of this act as determined by the Rockingham County Tax Department, with the formula for making the computation being stated in each contract.

SECTION 4. Contracts under Section 1 of this act apply only to the following described properties:

DUKE POWER

Tract 1

Beginning at a concrete monument set in the westerly line of S. R. # 1779 (Edgewood Road) and running thence from said beginning point, S 36 deg. 45 min. E 80.6 feet to a stake, thence N 69 deg. 26 min. E 826.6 feet to an iron rod found; thence N 20 deg. 32 min. W 239.7 feet to an iron rod; thence N 69 deg. 28 min. E 97.1 feet to an iron rod found; thence N 20 deg. 39 min. W 180.0 feet to an iron rod found; thence N 69 deg. 18 min. E 54.7 feet to a concrete monument found; thence N 20 deg. 30 min. W 240.4 feet to an iron rod; thence N 69 deg. 30 min. E 87.0 feet to an iron rod found; thence N 20 deg. 35 min. W 180.1 feet to an iron rod found; thence N 69 deg. 27 min. E 515.5 feet to

an iron rod and iron pipe found in the westerly boundary of the property of Fieldcrest Mills, Inc.; thence with said property line S 10 deg. 19 min. E 1390.2 feet to a concrete monument found in the southwesterly corner of the property of Fieldcrest Mills, Inc.; thence with the southerly line of Fieldcrest Mills, Inc., N 79 deg. 03 min. E 161.9 feet to a concrete monument found; thence S 80 deg. 53 min. E 1126.3 feet to an iron rod found in the centerline of the CNW Railroad spur track; thence with the centerline of said Spur track the following courses and distances: S 4 deg. 02 min. E 100.0 feet to a point; S 0 deg. 02 min. E 99.9 feet to a point; S 4 deg. 04 min. W 100.0 feet to a point; S 7 deg. 43 min. W 100.0 feet to a point; S 11 deg. 45 min. W 100.0 feet to a point; S 15 deg. 57 min. W 100.0 feet to a point; S 20 deg. 00 min. W 100.0 feet to a point; S 24 deg. 15 min. W 100.0 feet to a point; S 28 deg. 05 min. W 100.0 feet to a point; S 31 deg. 33 min. W 72.0 feet to a spike found; thence N 88 deg. 54 min. E 623.1 feet to an iron rod found; thence S 18 deg. 36 min. E 367.2 feet to an iron pipe found; thence S 6 deg. 02 min. W 74.9 feet to an iron pipe found; thence S 24 deg. 38 min. E 141.5 feet to a point in the northerly bank of the Dan River; thence with the Dan River the following courses and distances: S 66 deg. 35 min. W 48.8 feet; S 54 deg. 44 min. W 77.0 feet; S 61 deg. 37 min. W 108.8 feet; S 55 deg. 43 min. W 74.6 feet; S 53 deg. 05 min. W 203.1 feet; S 32 deg. 02 min. W 281.5 feet; S 27 deg. 20 min. W 140.7 feet; S 27 deg. 58 min. W 436.3 feet; S 29 deg. 28 min. W 142.1 feet; S 26 deg. 31 min. W 236.2 feet; S 41 deg. 30 min. W 204.0 feet; S 52 deg. 38 min. W 266.5 feet; S 58 deg. 31 min. W 263.2 feet; S 63 deg. 40 min. W 317.8 feet; S 57 deg. 38 min. W 75.4 feet; S 65 deg. 46 min. W 312.0 feet; S 71 deg. 46 min. W 148.1 feet; S 75 deg. 07 min. W 232.9 feet; S 76 deg. 21 min. W 205.8 feet; N 6 deg. 55 min. W 64.0 feet; S 68 deg. 04 min. W 235.4 feet; S 17 deg. 07 min. E 61.4 feet; S 66 deg. 21 min. W 108.2 feet; S 67 deg. 33 min. W 318.2 feet; S 68 deg. 11 min. W 220.3 feet; S 70 deg. 06 min. W 139.5 feet; S 78 deg. 35 min. W 234.8 feet; S 65 deg. 10 min. W 88.2 feet to a point in the southeasterly margin of the property of Fieldcrest Mills, Inc.; thence with the property line of Fieldcrest Mills, Inc.; N 18 deg. 51 min. W 176.4 feet to an iron rod set; thence S 56 deg. 26 min. W 96.7 feet to an iron pipe found; thence N 19 deg. 06 min. W 1090.1 feet to a concrete monument found; thence N 82 deg. 22 min. E 247.0 feet to a point in the westerly bank of a pond; thence with the westerly bank of said pond, eight courses and distances as follows: (1) N 46 deg. 33 min. W 98.7 feet; (2) N 32 deg. 44 min. W 86.0 feet; (3) N 47 deg. 00 min. W 82.7 feet; (4) N 84 deg. 22 min. W 45.6 feet; (5) N 39 deg. 52 min. W 147.9 feet; (6) N 18 deg. 33 min. W 89.6 feet; (7) N 7 deg. 38 min. E 206.9 feet; (8) N 36 deg. 54 min. E 60.4 feet at an intersection of the said pond and Moir Branch; thence with the centerline of Moir Branch the following courses and distances: (1) N 22 deg. 07 min. W 200.2 feet; (2) N 25 deg. 40 min. W 40.5 feet; (3) N 45 deg. 48 min. W 58.0 feet; (4) N 11 deg. 08 min. W 47.0 feet; (5) S 79 deg. 32 min. E 37.3 feet; (6) N 4 deg. 09 min. E 25.0 feet; (7) N 6 deg. 39 min. W 132.1 feet; (8) N 5 deg. 28 min. E 193.7 feet; (9) N 7 deg. 04 min. W 76.1 feet; (10) S 30 deg. 57 min. W 48.8 feet; (11) S 73 deg. 25 min. W 18.4 feet; (12) N 15 deg. 37 min. W 44.9 feet; (13) N 3 deg. 35 min. E 122.1 feet; (14) N 3 deg. 20 min. W 34.8 feet; (15) N 14 deg. 01 min. W 129.2 feet; (16) N 50 deg. 22 min. W 61.7 feet; (17) N 22 deg. 47 min. W 85.8 feet; (18) N 34 deg. 56 min. W 29.7 feet; (19) N 4 deg. 25 min. E 177.2 feet; (20) N 16

deg. 48 min. E 54.7 feet; (21) N 30 deg. 16 min. E 28.2 feet; (22) N 18 deg. 14 min. W 25.5 feet; (23) N 13 deg. 26 min. W 47.0 feet; (24) N 4 deg. 41 min. E 115.3 feet; (25) S 89 deg. 12 min. E 26.5 feet; (26) N 41 deg. 02 min. E 26.5 feet; (27) N 9 deg. 00 min. W 94.8 feet; (28) N 1 deg. 43 min. W 62.0 feet; (29) N 40 deg. 28 min. E 15.7 feet; (30) N 22 deg. 50 min. E 46.8 feet; (31) N 11 deg. 42 min. E 37.1 feet; (32) S 82 deg. 45 min. E 40.0 feet; (33) N 16 deg. 55 min. E 45.3 feet; (34) N 21 deg. 40 min. E 37.9 feet; (35) N 6 deg. 31 min. E 114.3 feet to a point in the southerly line of the property of Fieldcrest Mills, Inc.; thence with the southerly line of said property N 63 deg. 10 min. E 308.3 feet to an iron pipe found; thence N 63 deg. 14 min. E 523.5 feet to an iron pipe found; thence N 63 deg. 07 min. E 132.1 feet to an iron pipe found; N 63 deg. 20 min. E 171.2 feet to an iron pipe found; thence N 63 deg. 13 min. E 357.6 feet to the point of beginning, containing 371.48 acres.

Tract 2

Beginning at a point on the west bank of Miry Branch at the confluence of Miry Branch and Dan River, thence with the west branch of Miry Branch the following courses and distances: S 33 deg. 39 min. W 85.4 feet; S 57 deg. 48 min. W 80.0 feet; S 30 deg. 56 min. W 51.1 feet; S 14 deg. 24 min. E 36.7 feet; S 43 deg. 41 min. E 74.3 feet; S 1 deg. 31 min. W 72.2 feet; S 6 deg. 51 min. W 117.5 feet; S 5 deg. 17 min. W 37.8 feet; S 45 deg. 12 min. W 74.0 feet; S 41 deg. 15 min. W 117.0 feet; S 31 deg. 11 min. W 36.9 feet; S 15 deg. 35 min. E 72.8 feet; S 31 deg. 08 min. W 52.5 feet; S 24 deg. 33 min. E 44.3 feet; S 24 deg. 09 min. W 94.5 feet; S 7 deg. 15 min. W 35.1 feet; S 36 deg. 54 min. E 71.5 feet to an iron rod; thence S 72 deg. 11 min. W 395.3 feet to a concrete monument found; thence N 2 deg. 25 min. E 917.1 feet to the southerly line of said river; thence with the southerly bank of Dan River three calls as follows: N 70 deg. 00 min. E 336.4 feet; N 69 deg. 52 min. E 115.1 feet; N 79 deg. 21 min. E 154.5 feet to the point of beginning, containing 9.08 acres.

Miller Brewing Company

TRACT I

Being a tract of land 1357.79 acres, more or less, in Leaksville Township, Rockingham County, North Carolina, bounded by Meadow Road (NC State Road #770) and property owned by Spray Cotton Mills, Inc., on the South; Summit Road, property owned by Powell, Henry Raefield on the West; property owned by Herbert Hopper, Joe Scales, and the Virginia State Line on the North; and, Main Street, property owned by Lawson, Lacy Hall, Herman Patterson, Slayton and Cedrick Willard on the East; and more specifically described as follows:

BEGINNING at an iron stake in the North Margin of the right of way of Eastern Street (State Road #1774) at the Southwest corner of property owned by W. Smart, said beginning point also being situate at the Easternmost corner of property conveyed to

Spray Cotton Mills, Inc., in Deed Book 694, Page 902, Rockingham County Public Registry; running thence from said beginning point the following calls along the East line of the Spray Cotton Mills property: North 23 deg. 53 min. West 133.01 feet; North 37 deg. 21 min. West 159.23 feet; North 23 deg. 19 min. West 154.10 feet; and North 9 deg. 52 min. West 394.73 feet to a point situated at the Northeast corner of the Spray Cotton Mills, Inc. property; thence with the North line of the Spray Cotton Mills, Inc. property, South 78 deg. 53 min. West 792.12 feet and South 85 deg. 26 min. West 1,281.15 feet to the Northwest corner of the Spray Cotton Mills, Inc. property; thence continuing with the Spray Cotton Mills, Inc. West line, South 0 deg. 52 min. West 867.34 feet to a point; thence South 73 deg. 15 min. West 415.79 feet to a point; thence South 16 deg. 45 min. East 1300 feet to a point in the northern margin of Meadow Road (N.C. State Road 770); thence with the northern margin of Meadow Road the following courses and distances: South 73 deg. 14 min. 40 sec. West 2362.50 feet; South 74 deg. 26 min. 10 sec. West 186.96 feet; South 80 deg. 5 min. 20 sec. West 210.67 feet; South 84 deg. 16 min. 30 sec. West 646.55 feet; and, South 83 deg. 53 min. West 336.01 feet to an iron in the North margin of the right of way of said Meadow Road; thence leaving the North margin of the right of way of Meadow Road and turning in a northern direction, North 3 deg. 37 min. 20 sec. West 605.50 feet to an iron stake in the East line of Jarrett; thence continuing with Jarrett's East line, North 4 deg. 38 min. 50 sec. East 470 feet to an iron; thence North 5 deg. 58 min. 20 sec. East 591 feet to an iron at the Northeast corner of property owned by Jarrett; thence with Jarrett's North line, North 89 deg. 22 min. 50 sec. West 974.50 feet to an iron in the East margin of the right of way of Summit Road, Jarrett's Northwest corner; thence with the East right of way line of Summit Road, North 10 deg. 01 min. 20 sec. West 239.45 feet and North 26 deg. 45 min. 50 sec. West 99.93 feet to a point in the East margin of the right of way of Summit Road at Pulliam's Southwest corner; thence with Pulliam's South line, North 63 deg. 13 min. 10 sec. East 300 feet to an iron stake at Pulliam's Southeast corner; thence with Pulliam's East line, North 26 deg. 46 min. West 129.71 feet to a point at the Southwest corner of property conveyed to Northwestern Engineering Corporation in Book 694, Page 772; thence with the South line of Northwestern Engineering Corporation, North 46 deg. 15 min. 51 sec. East 280 feet to a point; thence with Northwestern Engineering Corporation's East line, North 38 deg. 20 min. West 300 feet to a point in the South right of way of an unnamed street dedicated in Book 685, Page 840, Rockingham County Public Registry; thence with the South right of way line of said unnamed street and with the North line of Northwestern Engineering Corporation, South 47 deg. 6 min. 34 sec. West 280 feet to the northwest corner of the Northwestern Engineering Corporation; thence along the western line of Northwestern Engineering Corporation, South 38 deg. 33 min. East 224.32 feet to a point, corner with Pulliam, thence with the line of Pulliam, South 51 deg. 54 min. West 299.77 feet to a point in the eastern margin of Summit Road; thence with the eastern margin of Summit Road, North 38 deg. 22 min. West 199.30 feet to a point in the southern margin of the unnamed street referred to above; thence continuing along the eastern margin of Summit Road across said unnamed street, North 44 deg. 10 min. West 60.01 feet to a point; thence still with the eastern margin of Summit Road, North 47 deg. 2 min. West 199.18 feet to a point,

corner with Powell; thence with the line of Powell, North 44 deg. 38 min. 50 sec. East 293.38 feet to a point, the northwest corner of the property conveyed to Southeastern Warehousing Distribution Center by deed recorded in the Rockingham County Registry in Book 685, Page 841; thence with the line of Southeastern Warehousing Distribution Center, South 46 deg. 51 min. East 211.7 feet to a point in the northern margin of said unnamed street; thence with the northern margin of said unnamed street, North 47 deg. 6 min. 34 sec. East 637.67 feet to a point, the southeast corner of Southeastern Warehousing Distribution Center; thence North 43 deg. 53 min. 26 sec. West 397.68 feet with the East line of the Southeastern Warehousing property to a point; thence North 88 deg. 23 min. 10 sec. West 442.49 feet with the North line of the Southeastern Warehousing property to a point in the East line of property owned by Powell; thence with Powell's East line, North 8 deg. 45 min. West 859.33 feet to an old set stone, corner with property formerly owned by W. B. Light; thence with Light's East line, North 16 deg. 30 min. 10 sec. West 1230.19 feet to an iron & monument; thence North 14 deg. 50 min. 40 sec. West 1082.81 feet to an iron & monument found, corner with Henry Raefield; thence with Raefield's East line, North 16 deg. 01 min. 50 sec. West 336.06 feet to an iron stake; thence turning in an easterly direction, North 80 deg. 33 min. 30 sec. East 317.69 feet to an iron stake; North 80 deg. 48 min. 10 sec. East 267.03 feet to an iron stake; South 87 deg. 59 min. East 265.93 feet to an iron; thence North 2 deg. 1 min. East 581.28 feet to an iron within the right of way line of N.C. State Road #1715; thence a line within the right of way of N.C. State Road #1715, South 87 deg. 58 min. East 520.71 feet to a point and South 81 deg. 3 min. East 203.10 feet to an iron; thence North 81 deg. 47 min. East 508.30 feet to an iron, corner with Herbert Hopper; thence with Hopper's South line, South 40 deg. 59 min. East 242.22 feet to an iron and North 77 deg. 26 min. East 669.10 feet to an iron; thence continuing with Hopper's South line, North 30 deg. East 600.70 feet to an iron stake, Hopper's Southeast corner and Joe Scales' Southwest corner; thence with Scales' South line, North 80 deg. 28 min. 10 sec. East 657.76 feet to a post oak and North 73 deg. 36 min. 40 sec. East 1874.50 feet to an iron stake, corner with Joe Scales; thence with Scales' East line, North 4 deg. 58 min. 20 sec. East 589.17 feet to a white oak; thence North 64 deg. 0 min. 40 sec. East 544 feet to an iron stake; thence North 8 deg. 5 min. 30 sec. West 532 feet to an iron stake, corner with Joe Scales in the North Carolina-Virginia State Line; thence with the North Carolina - Virginia State Line, South 86 deg. 39 min. 10 sec. East 3654.49 feet to an iron stake in said State Line, corner with property owned by Cedrick and Maria P. Willard; thence with Willard's West line, South 4 deg. 27 min. East 1756.47 feet to an iron stake, Slayton's Northeast corner; thence with Slayton and Herman Patterson's North lines, South 85 deg. 33 min. 20 sec. West 497.30 feet to an iron stake; thence South 3 deg. 23 min. 30 sec. West with Herman Patterson's West line, 1313.85 feet to an iron stake; thence with Lacy Hall's West line, South 3 deg. 0 min. 10 sec. West 759.38 feet to an iron stake, Lacy Hall's Southwest corner and Lawson's Northwest corner; thence with Lawson's West line, South 0 deg. 25 min. 20 sec. West 1069.67 feet to an iron stake, Lawson's Southwest corner and Harris' Northwest corner; thence with Harris' West line, South 4 deg. 21 min. 10 sec. East 267 feet to an iron stake in the North right of way line of Findowrie street; thence with the Northern terminus line of

Main Street, South 85 deg. 38 min. 50 sec. West 63.16 feet to a point; thence continuing with the West right of way line of Main Street, South 4 deg. 21 min. 10 sec. East 840.03 feet to an iron stake; thence leaving the West right of way line of Main Street, South 85 deg. 34 min. 40 sec. West 300 feet to an iron stake and South 4 deg. 25 min. 20 sec. East 150.23 feet to an iron stake; thence South 85 deg. 34 min. 40 sec. West 125 feet to a point and South 4 deg. 25 min. 20 sec. East 400 feet to an iron stake at W. Smart's Northeast corner; thence with Smart's North line, South 85 deg. 34 min. 10 sec. West 821 feet to an iron stake at Smart's Northwest corner; thence with Smart's West line, South 4 deg. 25 min. 20 sec. East 350 feet to an iron stake in the North right of way line of Eastern Street at the easternmost corner of property conveyed to Spray Cotton Mills, Inc., in Book 694, Page 902, Rockingham County Public Registry, the point and place of BEGINNING, containing 1357.79 acres, more or less, as shown on plat of survey by Shanks and Wilmarth, Engineers & Surveyors, dated December 2, 1975, File No. C-1034, and revised on May 20, 1976, and being the same property shown on Map Book 13, Page 28, Rockingham County Public Registry.

SAVE AND EXCEPT THEREFROM the 5.175 acres conveyed by Miller Brewing Company to Evans Warehouse, Inc. by deed recorded in Book 840, Page 2264, in the Rockingham County Public Registry.

TRACT II

Being a tract of 7.489 acres, more or less, in Leaksville Township, Rockingham County, North Carolina, and more specifically described as follows:

Commencing at an iron in the easterly margin of Summit Road, which iron is the Southwest corner of Powell and the Northwest corner of Lot I as shown on map hereinafter referred to; thence with the said margin of Summit Road South 47 deg. 01 min. 51 sec. East 199.18 ft. to an iron where said Summit Road is intersected by the northerly margin of a 60 ft. wide unnamed street; thence with said margin of said unnamed street North 47 deg. 06 min. 34 sec. East 300 ft. to a point, the POINT OF BEGINNING; thence leaving the said unnamed street North 46 deg. 54 min. 39 sec. West 220.39 ft., more or less, to Powell's line; thence with Powell's line North 08 deg. 45 min. West 589.63 feet to an iron; thence leaving Powell South 88 deg. 23 min. 10 sec. East 442.49 ft. to an iron; thence South 42 deg. 53 min. 26 sec. East 397.68 ft. to an iron in the northerly margin of the aforementioned unnamed street; thence with the said margin of the said unnamed street, South 47 deg. 06 min. 34 sec. West 631.05 ft. more or less to the point of beginning, containing 7.489 acres, more or less, and being a portion of Lot 2 as shown on Plat of Survey for Homer E. Wright, Jr., dated September 20, 1972, by E. L. Wilmarth, the said survey being recorded with a certain deed from W. P. Bickham, Trustee, et als. to Thomas S. Harrington, Trustee, dated February 6, 1973, which deed was recorded in the office of the Register of Deeds for Rockingham County.

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

SENATE BILL 1346:
Eden Annexation Contracts

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Berger
Date:	July 23, 2002	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1346 authorizes the City of Eden to enter into a contract with Duke Power and Miller Brewing Company to accept annual payments in lieu of taxes and, as part of the contract, to agree not to annex the property described in the contract prior to December 31, 2013. The General Assembly gave the City of Eden similar authority in 1993. The authority given in that legislation extends until December 30, 2003.***

CURRENT LAW: Chapter 418 of the 1993 Session Laws authorized the City of Eden to accept payments in lieu of taxes on certain property and to agree not to annex the property before December 30, 2003. This legislation was the first legislation enacted by the General Assembly authorizing a municipality to negotiate a contract to provide services to an area and to receive payments from the beneficiary of those services in lieu of not annexing the area for a certain amount of time. The 1993 legislation for the City of Eden included several tracts of land for Duke Power, Fieldcrest Cannon, Inc., Miller Brewing Company, and Unifi, Inc. Since 1993, the General Assembly has granted similar authority to City of Washington (1993), the Town of Stanley (1993), the City of Belmont (1997), the City of Hendersonville and the Town of Laurel Park (1997), the Town of Huntersville (1997), the City of Mount Holly (2000), and the Town of Weldon (2001).

BILL ANALYSIS: Senate Bill 1346 extends for an additional 10 years the authority originally given to the City of Eden in 1993 as it applies to property owned by Duke Power and Miller Brewing Company. The bill does not include the property described in the 1993 legislation owned by Fieldcrest Cannon, Inc. or Unifi, Inc. Like the 1993 legislation, this legislation provides that the payments in lieu of taxes must be annually computed based upon the tax valuations of the properties subject to the contracts as determined by the Rockingham County Tax Department. The formula for making the computation must be stated in the contract.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1160 A BILL TO BE ENTITLED AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO PROVIDE A ONE-TIME EXTENSION TO THE TIME PERIOD IN WHICH A TAXPAYER MAY SIGN A LETTER OF COMMITMENT WITH THE DEPARTMENT OF COMMERCE TO QUALIFY FOR A LOWER TIER DESIGNATION.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 1160

Finance Committee Substitute Adopted 7/2/02

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES AND TO PROVIDE A ONE-TIME EXTENSION TO THE TIME PERIOD IN WHICH A TAXPAYER MAY SIGN A LETTER OF COMMITMENT WITH THE DEPARTMENT OF COMMERCE TO QUALIFY FOR A LOWER TIER DESIGNATION.

The General Assembly of North Carolina enacts:

PART I: SUBSTANTIVE CHANGE

SECTION 1. Notwithstanding the provisions of Article 3A of Chapter 105 of the General Statutes to the contrary, if during January or February 2002 a taxpayer signed a letter of commitment with the Department of Commerce under G.S. 105-129.8 to create new jobs at a location or a letter of commitment with the Department of Commerce under G.S. 105-129.9 to place specific machinery and equipment in service at a location, then the taxpayer may calculate the credit for which the taxpayer qualifies based on the location's enterprise tier designation and development zone designation for 2001.

PART II: TECHNICAL CHANGES

SECTION 2. Subdivision (5) in the first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, reads as rewritten:

"(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but ~~is~~ are exempt from the State sales and use tax pursuant to G.S. 105-164.13B."

SECTION 3. Section 3 of S.L. 2001-264 reads as rewritten:

"**SECTION 3.** Any provision of a local act that conflicts with G.S. 153A-154.1 or G.S. 160A-214.1 is repealed. Any local meals tax penalty in addition to or greater than the corresponding penalty provided in G.S. 153A-154.1 or G.S. 160A-214.1 is repealed."

SECTION 4. Section 49 of S.L. 2001-414 reads as rewritten:

"**SECTION 49.** Section ~~47~~ 48 of this act does not derogate any existing powers."

SECTION 5. The introductory language of Section 13(a) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(a)** G.S. ~~105-472(a)~~ 105-472 reads as rewritten:".

SECTION 6. G.S. 20-10.1 reads as rewritten:

"**§ 20-10.1. Mopeds.**

It shall be unlawful for any person who is under the age of 16 years to operate a moped as defined in G.S. ~~20-4.01(27)d1~~105-164.3 upon any highway or public vehicular area of this State."

SECTION 7. G.S. 20-17.4(a)(1) reads as rewritten:

"(1) A first conviction of G.S. 20-138.1, driving while impaired, that occurred while the person was driving a motor vehicle that is not a commercial motor vehicle."

SECTION 8. G.S. 20-87(6) reads as rewritten:

"(6) Private Motorcycles. – The base fee on private passenger motorcycles shall be nine dollars ($9.00); except that when a motorcycle is equipped with an additional form of device designed to transport persons or property, the base fee shall be sixteen dollars ($16.00). ~~A~~ An additional fee of three dollars ($3.00) is imposed on each private motorcycle registered under this subdivision in addition to the base fee. The revenue from the additional fee, in addition to any other funds appropriated for this purpose, shall be ~~deposited in~~ used to fund the Motorcycle Safety Instruction Program created in G.S. 115D-72."

SECTION 9.(a) G.S. 58-6-25(c) reads as rewritten:

"(c) Returns; When Payable. – ~~The charge levied on each health maintenance organization is payable March 15 following the end of each calendar year.~~ The charge levied on each insurance company ~~other than a health maintenance organization~~ is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Secretary of Revenue. The return shall state the company's total North Carolina premiums or presumed premiums for the taxable year and shall be accompanied by any supporting documentation that the Secretary of Revenue may by rule require."

SECTION 9.(b) This section becomes effective for taxable years beginning on or after January 1, 2003.

SECTION 10. G.S. 105-116(a) reads as rewritten:

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

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

(2), (2a) Repealed by Session Laws 1998-22, s. 2, effective July 1, 1999.

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

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

The tax on an electric power company is three and twenty-two hundredths percent (3.22%) of the company's taxable gross receipts from the business of furnishing electricity, electric lights, current, or power. The tax on a water company is four percent (4%) of the company's taxable gross receipts from owning or operating a water system subject to regulation by the North Carolina Utilities Commission. The tax on a public sewerage company is six percent (6%) of the company's taxable gross receipts from owning or operating a public sewerage company. A company's taxable gross receipts are its gross receipts from business inside the State less the amount of gross receipts from sales reported under subdivision (b)(2). A company that engages in more than one business taxed under this section shall pay tax on each business. ~~A company is allowed a credit against the tax imposed by this section for the company's investments in certain entities in accordance with Part 5 of Article 4 of this Chapter.~~"

SECTION 11. G.S. 105-127(d) and (e) are repealed.

SECTION 12. G.S. 105-129.4(b3) reads as rewritten:

"(b3) Environmental Impact. – A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer first claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Environment and Natural Resources must notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within ~~this~~ the last five years."

SECTION 13. G.S. 105-129.12A(a) reads as rewritten:

"(a) Credit. – If a taxpayer that has purchased or leased real property in an enterprise tier one or two area begins to use the property in an eligible business during the taxable year, the taxpayer is allowed a credit equal to thirty percent (30%) of the eligible investment amount if all of the eligibility requirements of G.S. 105-129.4 are met. For the purposes of this section, property is located in an enterprise tier one or two area if the area the property is located in was an enterprise tier one or two area at the time the taxpayer applied for the ~~certification~~ determination required under G.S. 105-129.4(b5). The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the real property the taxpayer is using in this State in an eligible business on the last day of the taxable year exceeds the cost of all of the real property the taxpayer was using in this State in an eligible business

on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most real property in this State in an eligible business. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used by the taxpayer if the expenditures are not reimbursed or credited by the lessor. The entire credit may not be taken for the taxable year in which the property is first used in an eligible business but shall be taken in equal installments over the seven years following the taxable year in which the property is first used in an eligible business. When part of the property is first used in an eligible business in one year and part is first used in an eligible business in a later year, separate credits may be claimed for the amount of property first used in an eligible business in each year. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable."

SECTION 14. G.S. 105-130.5(b)(17) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(17) ~~The~~ To the extent included in federal taxable income, the following:

a. The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. ~~62A-6, and the~~ 62A-6.

b. The amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

SECTION 15.(a) G.S. 105-130.34(a) reads as rewritten:

"(a) Any corporation that makes a qualified donation of an interest in real property located in North Carolina during the taxable year 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 is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated in perpetuity to and accepted by ~~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 pursuant to G.S. 105-130.9. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed five hundred thousand dollars ($500,000). To support the credit allowed by this section, the taxpayer must file with its income tax return, for the taxable year in which the credit is claimed, a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

SECTION 15.(b) G.S. 105-151.12(a) reads as rewritten:

"(a) A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by ~~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. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. The credit allowed under this section may not exceed two hundred fifty thousand dollars ($250,000). To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection."

SECTION 16. G.S. 105-163.7(c) is repealed.

SECTION 17. G.S. 105-164.23 reads as rewritten:

"**§ 105-164.23. Consumer must keep records.**

Every consumer shall keep such records, receipts, invoices and other pertinent papers in such form as may be required by the Secretary and all such books, invoices and other records shall be open for examination by the ~~Secretary or any of his duly authorized agents.~~Department of Revenue. In the event the retailer, user or consumer has imported the tangible personal property and fails to produce an invoice showing the purchase price of the tangible personal property as defined in this Article which is subject to tax or the invoices do not reflect the true or actual cost as defined ~~herein,~~in this Article, then the Secretary shall ascertain in any manner feasible the true purchase price and assess and collect the tax with interest, plus penalties, if such have accrued, on the true ~~cost price as determined by him.~~purchase price as determined by the Secretary."

SECTION 18. G.S. 105-164.27A(b) reads as rewritten:

"(b) Telecommunications Service. – A direct pay permit for telecommunications service authorizes its holder to purchase telecommunications service without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the permit holder. A person who purchases telecommunications service under a direct pay permit must file a return and pay the tax due monthly to the Secretary. A direct pay permit issued under this subsection does not apply to any tax other than the tax on telecommunications service.

A call center that purchases interstate telecommunications service that originates outside this State and terminates in this State may apply to the Secretary for a direct pay permit for telecommunications service. A call center is a business that is primarily engaged in providing support services to customers by telephone to support products or services of the business. A business is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

~~must be made on a form provided by the~~"

SECTION 19.(a) G.S. 105-187.1(4) reads as rewritten:

"(4) Recreational vehicle. – ~~A motorized or towable vehicle that combines transportation and temporary living quarters for travel, recreation, and camping. To qualify as a motorized recreational vehicle, the vehicle must be a camping and travel vehicle built on or as an integral part of a self-propelled motor vehicle chassis. If a towable vehicle is of such size or weight as to require a special highway movement permit, it is not a recreational vehicle. Towable recreational vehicles include travel trailers, fifth-wheel travel trailers, folding camping trailers, and truck campers.~~Defined in G.S. 20-4.01."

SECTION 19.(b) G.S. 20-4.01(32a) reads as rewritten:

"(32a) ~~Recreation~~ Recreational Vehicle. – A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use that either has its own motive power or is mounted on, or towed by, another vehicle. The basic entities are camping trailer, fifth-wheel travel trailer, motor home, travel trailer, and truck camper.

a. Motor home. – As defined in G.S. 20-4.01(27)d2.

b. Travel trailer. – A vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of a size or weight that does not require a special highway movement permit when towed by a motorized vehicle.

c. Fifth-wheel trailer. – A vehicular unit mounted on wheels designed to provide temporary living quarters for recreational, camping, or travel use, of a size and weight that does not require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

d. Camping trailer. – A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

e. Truck camper. – A portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use, consisting of a roof, floor, and sides and is designed to be loaded onto and unloaded from the bed of a pickup truck."

SECTION 19.(c) G.S. 20-116(d) reads as rewritten:

"(d) Maximum Length. – The following maximum lengths apply to vehicles. ~~A single vehicle having two axles shall not exceed 40 feet in length of extreme overall dimensions inclusive of front and rear bumpers. A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. Provided, however, trucks transporting unprocessed cotton from farm to gin~~

~~shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers.~~ A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes.

(1) Except as otherwise provided in this subsection, a single vehicle having two or three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers.

(2) Trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers.

(3) ~~Recreation~~ Recreational vehicles shall not exceed 45 feet in length overall, excluding bumpers and mirrors."

SECTION 19.(d) G.S. 20-305.2(a)(7) reads as rewritten:

"(7) The ownership, operation, or control of a dealership that sells primarily ~~recreation~~ recreational vehicles as defined in ~~G.S. 20-4.01(32a)~~20-4.01 by a manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, if the manufacturer, factory branch, distributor, or distributor branch, or subsidiary thereof, owned, operated, or controlled the dealership as of October 1, 2001."

SECTION 19.(e) G.S. 20-305.2(b) reads as rewritten:

"(b) This section ~~shall~~ does not apply to manufacturers or distributors of trailers or semitrailers that are not ~~recreation~~ recreational vehicles as defined in ~~G.S. 20-4.01(32a).~~G.S. 20-4.01."

SECTION 20. G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

SECTION 21. G.S. 159I-1 reads as rewritten:

"**§ 159I-1. Short title.**

This Chapter may be cited as the ~~North Carolina~~ Solid Waste Management Loan ~~Program.~~Program and Local Government Special Obligation Bond Act."

PART III: EFFECTIVE DATE

SECTION 22. Except as otherwise provided in this act, this act is effective when it becomes law.

SB 1160:
Revenue Laws Technical Changes

BILL ANALYSIS

Committee:	Senate	**Introduced by:**	Senator Hartsell
Date:	June 24, 2002	**Summary by:**	Martha H. Harris and Cindy Avrette
Version:	2nd Edition		

SUMMARY: Senate Bill 1160 makes numerous technical and clarifying changes to the revenue laws and related statutes. It also makes one substantive change. It is effective when it becomes law. The original bill was a recommendation of the Revenue Laws Study Committee.

PART I: SUBSTANTIVE CHANGE: Section 1 of the bill was introduced by Senator Soles as Senate Bill 1344. It allows a taxpayer that signed a letter of commitment with the Department of Commerce on or before February 28, 2002, to calculate its Bill Lee jobs creation tax credit and investment tax credit based on the location's enterprise tier and development zone designation for 2001 rather than 2002. This change would benefit taxpayers creating jobs or making eligible investments in areas whose tier designations increased for the calendar year 2002.

Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capita income, and population growth. The Department of Commerce must designate the counties' tier designations for the following year on or before December 31 of each year, based on the most recent data available. The Department of Commerce did not make the counties' tier designations for the 2002 calendar year until April 2002. It appears some taxpayers signed letters of commitment by February 28, 2002, under the belief they would be able to calculate the credit for which they qualified based on the location's enterprise tier designation for 2001. However, this is not possible under the current law for locations whose tier designation changed for 2002.

Section 1 of this bill would allow a taxpayer that signed a letter of commitment with the Department of Commerce during January or February 2002 for future planned expansion to calculate its Bill Lee jobs creation tax credit and investment tax credit based on the location's enterprise tier designation for 2001 rather than 2002. Because this section is permissive, its effect is to benefit taxpayers creating jobs or making eligible investments in areas whose designations increased for the calendar year 2002. The Department of Commerce reports that it has eight letters of commitment signed on or before February 28, 2002, in counties whose tier designations increased from 2001 to 2002.[1] The following chart shows the counties that would be affected by this section and the difference the section would make in the credit amounts the taxpayers qualify for:

[1] Although the bill also applies to areas designated as a development zone, it has no practical application for development zones because there were no letters of commitment signed with the Department of Commerce for a project in a development zone on or before February 28, 2002.

COUNTY[2]	# LETTERS OF COMMITMENT SIGNED BY 2/28/02	2001 TIER DESIGNATION *The credit and threshold amounts the taxpayer would receive under this section.*	2002 TIER DESIGNATION *The credit and threshold amounts the taxpayer will receive if this section is not enacted.*
Columbus	3	Tier 1: Jobs tax credit = $12,500 Threshold amount = $0	Tier 2: Jobs tax credit = $4,000 Threshold amount = $100,000
Richmond	1	Tier 1: Jobs tax credit = $12,500 Threshold amount = $0	Tier 2: Jobs tax credit = $4,000 Threshold amount = $100,000
Montgomery	1	Tier 2: Jobs tax credit = $4,000 Threshold amount = $100,000	Tier 3: Jobs tax credit = $3,000 Threshold amount = $200,000
Cumberland	1	Tier 3: Jobs tax credit = $3,000 Threshold amount = $200,000	Tier 4: Jobs tax credit = $1,000 Threshold amount = $500,000
Franklin	2	Tier 4: Jobs tax credit = $1,000 Threshold amount = $500,000	Tier 5: Jobs tax credit = $500 Threshold amount = $1,000,000

PART II: TECHNICAL CHANGES: The Revenue Laws Technical Changes bill was recommended by the Revenue Laws Study Committee. Each year the Revenue Laws Study Committee recommends numerous technical and clarifying changes. In 2002, because of the late adjournment of the 2001 Session, electronic copies of the updated statutes were not available in time to draft the complete bill for the study committee. Therefore, the study committee recommended a proposal that contained only two technical and clarifying changes to the Session Laws. The report stated the committee's intent that the technical changes to the statutes would be added in a committee substitute. The following table provides a section-by-section analysis of the proposed technical changes.

Shaded Items were in the original bill.

SECTION	G.S./S.L.	EXPLANATION
2	S.L. 1967-1096, as amended by S.L. 2001-414	Corrects a grammatical error.

[2] Onslow County moved from a Tier 2 county designation in 2001 to a Tier 3 county designation in 2002. However, it is not affected by this act because there were no letters of commitment signed with the Department of Commerce for a project located in that county on or before February 28, 2002.

SECTION	G.S./S.L.	EXPLANATION
3	S.L. 2001-264	Clarifies S.L. 2001-264, An Act To Provide Uniform Penalties For Local Meals Taxes. That act made all local meals tax penalties uniform by applying the existing State sales and use tax penalties to meals taxes. The act was intended to improve tax administration by making uniform the tax penalties for each local meals tax. After the act became law, staff noticed that its language might not be sufficiently clear to assure that the penalties will be uniform in each jurisdiction. This section adds language to clarify that additional or higher local penalties are repealed.
4	S.L. 2001-414	Corrects an incorrect cross-reference.
5	S.L. 2001-472	Corrects a typographical error. Although Section 3(a) of S.L. 2001-427 purports to amend just subsection (a) of G.S. 105-472, it actually amends the entire statute. This section conforms the law to accurately state that it amends the entire statute.
6	G.S. 20-10.1	Updates a cross-reference to a definition.
7	G.S. 20-17.4	Adds a missing phrase.
8	G.S. 20-87	Restores language intended to be enacted in 2001 but omitted due to a redlining error.
9	G.S. 58-6-25	Conforms the payment date of the insurance regulatory charge on HMOs to the date they file their premiums tax return. This has no substantive effect because the dates are the same in current law.
10	105-116	Deletes an obsolete cross-reference to a tax credit that is no longer allowed against franchise tax.
11	G.S. 105-127	Repeals two obsolete subsections. These subsections exempt certain stock from property tax. All stock is now exempt from property tax under G.S. 105-275(31).
12	G.S. 105-129.4	Corrects an incorrect word.
13	G.S. 105-129.12A	Conforms terminology to a change in procedure that was enacted in 2001.
14	G.S. 105-130.5	Clarifies that the corporate income tax deduction for 911 charges applies only if the taxpayer included the charges in federal taxable income. Without this correction, there could be an unintended double deduction for these charges.
15	G.S. 105-130.34 and G.S. 105-151.12	Clarifies that the credit for conservation donations applies only if the interest in real property is donated in perpetuity. This conforms the statute to interpretations by DOR and DENR[3]. Comparable federal law requires that a donation be (1) the entire interest of the donor, (2) a remainder interest, or (3) a restriction

[3] Under 15A NCAC 1F .0001 through .0006, DENR will certify donated property for the credit only if it provides a perpetual public benefit.

SECTION	G.S./S.L.	EXPLANATION
		in perpetuity. This provision was introduced as Sections 1 and 2 of Senate Bill 1252, recommended by the Environmental Review Commission.
16	G.S. 105-163.7	Repeals an obsolete subsection. The Industrial Commission receives the same information from another source now and no longer wants to get it from the Department of Revenue
17	G.S. 105-164.23	Conforms and updates language.
18	G.S. 105-164.27A	Deletes extra language intended to be deleted in 2001 but retained due to a redlining error.
19	G.S. 105-187.1, 20-4.01, 20-116, & 20-305.2	Conforms the definition of "recreational vehicle" in the highway use tax to the definition in the motor vehicles law, and eliminates inconsistent usage of the term. Also, clarifies and reorganizes the statute governing vehicle length.
20	G.S. 105-269.14	Conforms the use tax distribution percentage to reflect past and future rate changes.
21	G.S. 159I-1	Conforms the statutory short title in G.S. 159I-1 to match the title of G.S. Chapter 159I, which was amended in 2001.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: July 1, 2002

TO: Senate Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: PCS for SB 1160 (Revenue Laws Technical Changes)

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
State General Fund	-	-725,000	-725,000	-725,000	-725,000

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue and Department of Commerce. The enactment of the bill is not expected to affect the budget requirements of either department.

EFFECTIVE DATE: When the bill becomes law.

Note: The impact drops to $25,000 per year for three years beginning in 2007-08.

BILL SUMMARY: Section 1 allows a taxpayer that signed a letter of commitment with the Department of Commerce on or before February 28, 2002, to calculate its Bill Lee Act jobs and investment tax credits based on the location's enterprise tier and development zone designation for 2001 rather than 2002. This change would benefit taxpayers creating jobs or making eligible investments in areas whose tier designations increased for the calendar year 2002, thereby reducing magnitude of credits.

BACKGROUND INFORMATION: Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines the unemployment rate, per capita income, and population growth. The Department of Commerce must designate the counties' tier designations for the following year on or before December 31 of each year. The Department of Commerce failed to designate the counties' tier designation for the 2002 calendar year until April 2002 because the Employment Security Commission was unable to provide the necessary data until the end of March. It appears some taxpayers signed letters of commitment by February 28, 2002, under the belief they would be able to calculate the credit for which they qualified based on the location's enterprise tier designation for 2001.

ASSUMPTIONS AND METHODOLOGY: Bill Lee Act Tiers. The analysis reviewed job creation and investment data from 10 projects that might be affected by the legislation. For each project, the jobs credit difference was calculated by comparing the per job credit amount under the 2001 tier with the tier ranking for 2002. This difference was then multiplied by the anticipated number of new jobs. The resulting number was then divided by 4 since the credit must be taken in four installments. Finally, under the Lee Act the credits are first taken in the tax year following the year the jobs were created.

For the investment tax credit, the impact of the bill is a lower minimum investment threshold for credit eligibility. The eligibility change has no fiscal impact since the thresholds in the affected counties are fairly small. The primary impact comes from the fact that the amount of the credit is the difference between the investment level and the threshold. Thus, the 2001 thresholds provided a larger credit than the 2002 level in the affected counties. In general, the fiscal impact is equal to the difference in the threshold amount. This difference is then divided by seven (7) since this credit must be taken in seven installments, beginning with the year following the year the actual investment took place.

Technical Changes Portion of the Bill. No impact.

SOURCES OF DATA: Discussions with the finance staff of the Department of Commerce and the Executive Director of the Columbus County Economic Development Commission.

TECHNICAL CONSIDERATIONS: The impact estimates may overstate the short-term effect of the bill due to the fact that: (1) some taxpayers will not be able to use the full amount of the credit; and (2) the calculations are based on "letter of commitment" data and some planned projects might not take place.

MINUTES
HOUSE FINANCE COMMITTEE

July 23, 2002

The House Committee on Finance met on Thursday, July 23, 2002 in Room 544 of the Legislative Office Building at 5:12 p.m. The following members were present: Chairmen Allen, Buchanan, Luebke and Wainwright, Vice Chairs Hill and Jarrell; and Representatives Alexander, Baddour, Blust, Capps, Cox, Cunningham, Decker, Dedmon, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson and Womble. The following Sergeant-at-Arms staff was present: Bill Freeman, Matt Myers, Dusty Rhodes and Walter Spell. Staff including David Crotts, Martha Harris, Canaan Huie, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

The meeting was called to order by Chairman Buchanan and Representative Michaux, bill sponsor of Proposed Committee Substitute HB 99, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE COUNTIES TO LEVY A MENU OF LOCAL OPTION TAXES THAT WOULD BE SHARED WITH MUNICIPALITIES, TO REPEAL LOCAL GOVERNMENT REIMBURSEMENTS, TO REDUCE THE STATE SALES TAX RATE BY ONE-HALF CENT, TO REINSTATE THE CORPORATE INCOME TAX TO PREVIOUS LEVELS, TO INCREASE INCOME TAXES ON HIGHER-INCOME INDIVIDUALS, TO ELIMINATE SPECIAL TAX BREAKS FOR BANKS AND CIGARETTE MANUFACTURERS, AND TO MAKE TECHNICAL AND CONFORMING CHANGES, was recognized to explain the bill. Representative Michaux gave a brief explanation of the Local Sales Tax Swap, Local Option Revenue Sources and the Income Tax Changes. For further detailed explanation see attachment.

Chairman Buchanan asked if there was anyone from the public who would like to speak before the committee discussed the bill. Jim Hobbs, North Carolina Hotel Association and Gerry Hancock, Travel and Tourism Coalition, spoke against the bill. The Chair recognized Representative Blust ad he said even though there were some good things in the bill if taken separately, but it was a bad bill if left in its entirety. Representative Capps made a motion to give the bill an unfavorable report. The Chair denied this motion. Representative Luebke said the bill had good and bad points and would like to see debate on the bill to try to come to some agreement. He then made a motion in response to Representative Capps that he would like to give the bill a favorable report. Representative Womble said he would like to see reasonable parts of the bill salvaged and would like to know if there was someone that could speak on behalf of the North Carolina County Commissioners Association. At this time, Jim Blackburn, General Counsel for the County Commissioners Association, said they supported a number of the options. Representative Womble asked Representative Michaux if Part III, Income Tax Changes, on attachment, raise by 1% the income tax rate that applied to taxpayers with income above $100,000 (joint return)/$60,000 (single return) could be raise higher. Representative Michaux explained this was the two highest brackets and asked Martha Harris to elaborate on this question. Chairman Buchanan recognized Representative Hurley to speak on the bill. Representative Hurley said he felt there should be a study commission on local governments. Representative Wilson asked if she could send for an amendment offering a referendum to the people to vote on the one-half percent local sales tax. Chairman Buchanan said he would accept the amendment after further discussion on the bill. Chairman Buchanan recognized

Representative Weiss to send forth an amendment and requested Canaan Huie, staff, to explain.

At this time, Representative Cunningham was recognized for a motion to send HB 99 to a study commission. Representative McComas requested the ayes and no's. The vote failed by 10 to 19. Representative Weiss made a motion to adopt her amendment for discussion. After much discussion, Representative Pope requested a roll call vote on the amendment. The amendment passed by a vote of 15 to 14. Representative Wilson was recognized to send forth an amendment and made a motion for adoption. After a brief explanation and debate on the amendment, Representative Wilson called for a roll call vote. The amendment failed by 20 to 9. Representative Luebke made a substitute motion to Representative Capps's motion for a favorable report to PCS and unfavorable to the original bill. No vote was taken due to additional amendments not completed by staff. Representative Womble was recognized to send forth an amendment. Representative Luebke made a motion to adjourn and postpone further discussion and consideration of HB 99 to a later date. HB 99 was withdrawn from the calendar.

The meeting adjourned at 6:10 p.m.

Respectfully submitted,

Charles Buchanan
Representative Charles Buchanan
Chairman

Glenda O Jones
Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

July 23, 2002
Immediately following Session
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 99 Local Tax Menu-Representative Michaux

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCRA
Laura Laughinghouse	
DON HOSTETT	DOC
DAVID BARNES	DOJ
PERTH MAYNARD	
Ed Regan	N.C.A.C.C
Susan Markham	DENR
Ellen Hanshorne	DOA
BILL SCOGGIN	KENNEDY COVINGTON
PRESTON HOWARD	NCIC
Rod Brock	NCACC
Jim Blackburn	NC ASS'N of County Commissioners
Bryce Bone	Bone Assoc.

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCHCFA
Barbara Canales	MFS
Amy Jo Horne	NC Medical Society
Meg Jorgensen	Covenant with NC's Children
Paula Wolf	"
Elaine Mejia	NC BTC
Kim Cantrell	"
Chris Fitzsimon	Common Sense Fdtn
Kim Hibbard	NCLM
[illegible]	H&W
Lu-Ann Cox	NCPA

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian Francis	Meck County
Natalie English	Charlotte Chamber
Cam Cover	BPMHL
Lee Wescott	Sprint
Julie Woodson	NCCBI
Leslie Bevacqua	NCCBI
John Palumbo	AT&T
Trish Hyde	SBE
Sandy Sands	WCSR
Joanne Stevens	Nursing
Suzanne Winn	ACCCS

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eileene Shake	Nursing
Gary Rhoad	NC Travel & Tourism Coalition
Carol Lawler	EGHS
JE Hobbs	NCHLA
Lynn Mings	NC Div of Tourism
Mark Brown	Capitol Strategies
Ruth Sappie	NCDOT
Diana Wilkins	Mercer & Assoc
Stephanie Manson	NC Assn. of REALTORS, INC.
Joe McClees	McClees Consulting Inc
Michelle Frazier	NC Bar Ass'n

VISITOR REGISTRATION SHEET

HOUSE FINANCE — JULY 23, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elizabeth DAlton	Bone & Associates
Boyd Cauble	City of Charlotte
BRANDON THOMAS	CITY OF CHARLOTTE
GENE AINSWORTH	RJ REYNOLDS
John Melton	Gov office?
Mike Causey	NC Glass Assn.
Brad Spencer	NCDOR
John Rust	NCCDC
Anne Wilmer	NCCADV
Jennifer Sullivan	NASW-NC

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 99
Corrected Copy 3/15/01
PROPOSED COMMITTEE SUBSTITUTE H99-CSLCx-102

Short Title: Local Tax Menu and Other Tax Changes. (Public)

Sponsors:

Referred to:

February 13, 2001

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO LEVY A MENU OF LOCAL OPTION TAXES THAT WOULD BE SHARED WITH MUNICIPALITIES, TO REPEAL LOCAL GOVERNMENT REIMBURSEMENTS, TO REDUCE THE STATE SALES TAX RATE BY ONE-HALF CENT, TO REINSTATE THE CORPORATE INCOME TAX TO PREVIOUS LEVELS, TO INCREASE INCOME TAXES ON HIGHER-INCOME INDIVIDUALS, TO ELIMINATE SPECIAL TAX BREAKS FOR BANKS AND CIGARETTE MANUFACTURERS, AND TO MAKE TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

PART I. LOCAL SALES TAX SWAP

SECTION 1.1. G.S. 105-521 is repealed.

SECTION 1.2. Article 44 of Chapter 105 of the General Statutes, as amended by this act, reads as rewritten:

"Article 44.

~~Third One-Half Cent (1/2¢)~~ Two-Cent (2¢) Local Government Sales and Use Tax.

"**§ 105-515. Short title.**

This Article is the ~~Third One-Half Cent (1/2¢)~~Two-Cent (2¢) Local Government Sales and Use Tax Act.

"**§ 105-516. Limitations.**

This Article applies only to counties that levy the first one-cent (1¢) sales and use tax under Article 39 of this Chapter or under Chapter 1096 of the 1967 Session Laws, the first one-half cent (1/2¢) local sales and use tax under Article 40 of this Chapter, and the second one-half cent (1/2¢) local sales and use tax under Article 42 of this Chapter.

"**§ 105—517. Levy.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the taxes in a county, the board of commissioners of a

county may, by resolution, levy ~~one-half percent (1/2%)~~ local sales and use taxes up to the rate approved in the referendum, but no more than two percent (2%). The rate must be in increments no smaller than one-half percent (1/2%). These taxes are in addition to any other State and local sales and use taxes levied pursuant to law.

(b) Without Vote. – If the question of whether to levy taxes under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy ~~one-half percent (1/2%)~~up to two percent (2%) local sales and use ~~taxes~~ taxes. The rate must be in increments no smaller than one-half percent (1/2%). These taxes are in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

(c) Effective Date. – A tax levied under this Article may not become effective before ~~July 1, 2003.~~ October 1, 2002.

"**§ 105-518. County election on adoption of tax.**

(a) Resolution. – The board of commissioners of a county may direct the county board of elections to conduct a special election on the question of whether to levy local ~~one-half percent (1/2%)~~ sales and use taxes in the county as provided in this Article. The election must be held on a date jointly agreed upon by the two boards and must be held in accordance with the procedures of G.S. 163-287.

(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

[ ] FOR [ ] AGAINST

~~one-half percent (1/2%)~~[X] percent (X%) local sales and use taxes, to replace the ~~current~~ one-half percent (1/2%) State sales and use taxes that end ~~July 1, 2003.~~October 1, 2002.

"**§ 105-519. Administration of taxes.**

Except as provided in this Article, the adoption, levy, collection, administration, and repeal of these additional taxes must be in accordance with Article 39 of this Chapter. A tax levied under this Article does not apply to the sales price of food that is exempt from tax pursuant to G.S. 105-164.13B.

"**§ 105-520. Distribution of taxes.**

(a) Point of Origin. – The Secretary must, on a monthly basis, allocate to each taxing county one-half of the net proceeds of the tax collected in that county under this Article. If the Secretary collects taxes under this Article in a month and the taxes cannot be identified as being attributable to a particular taxing county, the Secretary must allocate one-half of the net proceeds of these taxes among the taxing counties in proportion to the amount of taxes collected in each county under this Article in that month.

(b) Per Capita. – The Secretary must, on a monthly basis, allocate the remaining net proceeds of the tax collected under this Article among the taxing counties on a per capita basis according to the most recent annual population estimates certified to the

Secretary by the State Budget Officer. If the tax is levied at different rates in different counties, the per capita allocation must be calculated separately for each half-cent (1/2¢) increment levied. The Secretary must then adjust the amount allocated to each county as provided in G.S. 105-486(b).

(c) Distribution Between Counties and Cities. – The Secretary must divide and distribute the funds allocated under this section each month between each taxing county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this subsection for a month if it is not entitled to a distribution under G.S. 105-501 for the same month."

SECTION 1.3. Notwithstanding the provisions of G.S. 105-520, the distributions under that section during the 2002-2003 fiscal year must be made quarterly rather than monthly. For the purpose of the per capita distribution under that section during 2002-2003, if any taxes levied under Article 44 of Chapter 105 of the General Statutes by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary must distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

SECTION 1.4. Section 34.13(c) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July 1, 2003.~~ October 1, 2002. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 1.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed under this section."

SECTION 1.6. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.7. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003~~ October 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective October 1, 2002, the county must notify the Secretary on or before September 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days' advance notice of the tax levy.

For taxes ~~levied on or~~ that are to become effective after January 1, ~~2004~~ 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.8. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003~~ 2002."

SECTION 1.9. Notwithstanding the provisions of G.S. 105-517(b), a county may levy a tax by resolution that becomes effective on or before January 1, 2003, under Article 44 of Chapter 105 of the General Statutes by giving at least 48 hours notice of its intent to adopt the resolution, as provided under G.S. 143-318.12(b)(2).

SECTION 1.10. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.11. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.12(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.12.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article ~~shall be known as the "Local~~ is the First One-Cent (1¢) Local Government Sales and Use Tax ~~Act."~~Act."

SECTION 1.13.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.13.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article ~~shall be known as the Supplemental~~ is the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.14.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article ~~shall be known as the Additional Supplemental~~ is the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

PART II. LOCAL OPTION REVENUE SOURCES

SECTION 2. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

" Article 46.

"Local Government Meals Tax.

"**§ 105-535. Short title.**

This Article is the Local Government Meals Tax Act.

"**§ 105-536. Definitions.**

The definitions in G.S. 105-164.3 apply to this Article. In addition, the following definitions apply in this Article:

(1) City. – Defined in G.S. 153A-1.

(2) Person. – Defined in G.S. 105-228.90.

"**§ 105-537. Levy.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the tax in a county, the board of commissioners of a county may, by resolution, levy a local meals tax up to the rate approved in the referendum.

(b) Without Vote. – If the question of whether to levy a tax under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy a local meals tax. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

(c) Rate; Scope; Effective Date. – A tax levied under this section may not exceed two percent (2%). The rate must be in increments no smaller than one-half percent (1/2%). A tax levied under this section is in addition to any other State and local sales and use and meals taxes levied pursuant to law. The tax applies to the sales price of prepared food sold within the county at retail, for consumption on or off the premises, by a retailer within the county that is subject to sales tax under G.S. 105-164.4(a)(1). A meals tax must become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(d) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

[X] percent (X%) local meals tax, in addition to the current local sales and use and meals taxes.'

"**§ 105-538. Exemptions.**

A meals tax levied under this Article does not apply to the following sales of prepared food:

(1) Prepared food served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.

(2) Retail sales exempt from taxation under G.S. 105-164.13.

(3) Retail sales through or by means of vending machines.

(4) Prepared food served by a retailer subject to the local occupancy tax if the charge for the prepared food is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the retailer.

(5) Prepared food furnished without charge by an employer to an employee.

(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments, other than sales of prepared food in the delicatessen or similar department of the grocer or grocery section.

"**§ 105-539. Collection.**

Every retailer subject to a tax levied under this Article must, on and after the effective date of the levy of the tax, collect the tax. This tax must be collected as part of the charge for furnishing prepared food. The tax must be stated and charged separately from the sales records, and must be paid by the purchaser to the retailer as trustee for and on account of the county. The tax must be added to the sales price and passed on to the purchaser instead of being borne by the retailer. The county must design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

"**§ 105-540. Administration.**

The county must administer a tax levied under this Article. A tax levied under this Article is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every retailer liable for the tax must, on or before the 15th day of each month, prepare and file a return on a form prescribed by the county. The return must show the total gross receipts derived in the preceding month from sales to which the tax applies.

A return filed with the county finance officer under this Article is not a public record and may not be disclosed except as provided in G.S. 153A-148.1 or G.S. 160A-208.1.

"**§ 105-541. Refunds.**

The county must refund to a nonprofit or governmental entity the meals tax paid by the entity on eligible purchases of prepared food. A nonprofit or governmental entity's purchase of prepared food is eligible for a refund under this section if the entity is entitled to a refund under G.S. 105-164.14(b) or (c) of local sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(c) and (d) apply to refunds to governmental entities. When an entity applies for a refund of the meals tax paid by it on purchases, it must attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection must provide any information required by the county to substantiate the claim.

"**§ 105-542. Distribution.**

Each month, the county must divide and distribute the net proceeds of a tax levied under this Article between the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section for a month if it is not entitled to a distribution under G.S. 105-501 for the same month.

"**§ 105-543. Penalties.**

The penalties provided in G.S. 153A-154.1 apply to a tax levied under this Article.

"**§ 105-544. Repeal or reduction.**

A meals tax levied under this Article may be repealed or reduced by a resolution adopted by the board of commissioners of the taxing county. Repeal or reduction of a meals tax must become effective on the first day of a month and may not become

effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a meals tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

SECTION 3.(a) Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 47.

"Local Government Occupancy Tax.

"**§ 105-545. Short title.**

This Article is the Local Government Occupancy Tax Act.

"**§ 105-546. Levy.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the tax in a county, the board of commissioners of a county may, by resolution, levy a local occupancy tax up to the rate approved in the referendum.

(b) Without Vote. – If the question of whether to levy a tax under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy a local occupancy tax. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

(c) Rate; Scope. – A tax levied under this section may not exceed two percent (2%). The rate must be in increments no smaller than one-half percent (1/2%). A tax levied under this section is in addition to any other State and local sales and use and room taxes levied pursuant to law. The tax applies to the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3).

(d) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

[X] percent (X%) local occupancy tax, in addition to the current local sales and use taxes and local occupancy taxes.'

"**§ 105-547. Administration.**

A tax levied under this Article shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this Article.

"**§ 105-548. Distribution.**

Each month, the county must divide and distribute the net proceeds of a tax levied under this Article between the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session

Laws are distributed. No municipality may receive any funds under this section for a month if it is not entitled to a distribution under G.S. 105-501 for the same month."

SECTION 3.(b) G.S. 153A-155(g) reads as rewritten:

"(g) This section applies to an occupancy tax levied under Article 47 of Chapter 105 of the General Statutes. In addition, with respect to an occupancy tax levied under a local act, this section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 4. Subchapter VIII of Chapter 105 of the General Statutes is amended by adding a new Article to read:

"Article 48.

"Local Government Income Tax.

"**§ 105-550. Short title.**

This Article is the Local Government Income Tax Act.

"**§ 105-551. Definitions.**

The definitions provided in G.S. 105-134.1 and the following definitions apply in this Article:

(1) City. – Defined in G.S. 153A-1.

(2) North Carolina income tax. – The amount of tax imposed on the taxpayer under Part 2 of Article 4 of this Chapter for the taxable year before the subtraction of any credits allowed by this Chapter.

"**§ 105-552. Levy.**

(a) After Vote. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the tax in a county, the board of commissioners of a county may, by resolution, levy a local income tax on residents of the county, up to the rate approved in the referendum.

(b) Without Vote. – If the question of whether to levy a tax under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy a local income tax on residents of the county. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.

(c) Rate; Scope; Effective Date. – A tax levied under this section is calculated as a percentage of the North Carolina income tax of every individual who is a resident of the county as of the end of the taxable year. The rate of tax may not exceed five percent (5%). The rate must be in increments no smaller than one percent (1%). A tax levied under this section is in addition to any other State and local income taxes levied pursuant to law. If the resolution levying the tax is adopted before September 1, the tax becomes effective for taxable years beginning on or after the following January 1. If the resolution is adopted on or after September 1, the tax becomes effective for taxable years beginning on or after January 1 of the second calendar year following adoption of the resolution.

(d) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the tax authorized by this Article must be in the following form:

'[ ] FOR [ ] AGAINST

Local income tax on residents of the county, up to [X] percent (X%) of each resident's North Carolina income tax.'

"**§ 105-553. Administration.**

(a) Resolution. – The board of commissioners of the county must, upon adoption of a resolution levying a tax under this Article, immediately deliver a certified copy of the resolution to the Secretary of Revenue, accompanied by a certified statement from the county board of elections setting forth the results of any special election approving the tax in the county. Upon receipt of these documents, the Secretary of Revenue must administer the tax in the county as provided in this Article.

(b) Credits. – No credits are allowed against a tax imposed by this Article.

(c) Distribution. – The Secretary of Revenue must quarterly allocate to each county the net proceeds of the tax it levies under this Article. As used in this section, net proceeds means gross proceeds less refunds, less the cost to the State of collecting and administering the tax, and less any other deductions that may be properly charged to the county.

The Secretary must then divide and distribute the net proceeds between the county and the cities in the county in the same manner as the tax proceeds distributed under G.S. 105-472. No municipality may receive any funds under this section for a month if it is not entitled to a distribution under G.S. 105-501 for the same month.

(d) Administration and Penalties. – The provisions of Article 9 of this Chapter apply to a tax levied under this Article.

(e) Repeal or Reduction. – A tax levied under this Article may be repealed or reduced by a resolution adopted by the board of county commissioners. If the resolution is adopted before September 1, the repeal becomes effective for taxable years beginning on or after the following January 1. If the resolution is adopted on or after September 1, the repeal becomes effective for taxable years beginning on or after January 1 of the second calendar year following adoption of the resolution. Repeal or reduction of a local income tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction."

PART III. INCOME TAX CHANGES

SECTION 5.(a) G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. ~~Corporations.~~Corporate income tax imposed.**

A tax is imposed on the State net income of every C Corporation doing business in this ~~State.~~State at the rate of seven and seventy-five one-hundredths percent (7.75%) of the taxpayer's State net income. An S Corporation is not subject to the tax levied in this section. ~~The tax is a percentage of the taxpayer's State net income computed as follows:~~

~~Income Years Beginning~~	~~Tax~~
~~In 1997~~	~~7.5%~~
~~In 1998~~	~~7.25%~~

~~In 1999~~	~~7%~~
~~After 1999~~	~~6.9%.~~"

SECTION 5.(b) This section is effective for taxable years beginning on or after January 1, 2002, and expires for taxable years beginning on or after January 1, 2005.

SECTION 6.(a) Section 34.18(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.18.(b)** This section becomes effective for taxable years beginning on or after January 1, 2001, and expires for taxable years beginning on or after January 1, ~~2004.~~2005. Notwithstanding G.S. 105-163.15, no addition to tax may be made under that statute for a taxable year beginning on or after January 1, 2001, and before January 1, 2002, with respect to an underpayment of individual income tax to the extent the underpayment was created or increased by this section."

SECTION 6.(b). G.S. 105-134.2(a) reads as rewritten:

"(a) A tax is imposed upon the North Carolina taxable income of every individual. The tax shall be levied, collected, and paid annually and shall be computed at the following percentages of the taxpayer's North Carolina taxable income.

(1) For married individuals who file a joint return under G.S. 105-152 and for surviving spouses, as defined in section 2(a) of the Code:

Over	Up To	Rate
-0-	$21,250	6%
$21,250	$100,000	7%
$100,000	$200,000	~~7.75%~~8.75%
$200,000	NA	~~8.25%~~9.25%

(2) For heads of households, as defined in section 2(b) of the Code:

Over	Up To	Rate
-0-	$17,000	6%
$17,000	$80,000	7%
$80,000	$160,000	~~7.75%~~8.75%
$160,000	NA	~~8.25%~~9.25%

(3) For unmarried individuals other than surviving spouses and heads of households:

Over	Up To	Rate
-0-	$12,750	6%
$12,750	$60,000	7%
$60,000	$120,000	~~7.75%~~8.75%
$120,000	NA	~~8.25%~~9.25%

(4) For married individuals who do not file a joint return under G.S. 105-152:

Over	Up To	Rate
-0-	$10,625	6%
$10,625	$50,000	7%
$50,000	$100,000	~~7.75%~~8.75%
$100,000	NA	~~8.25%~~9.25%"

SECTION 6.(c). Subsection (b) of this section is effective for taxable years beginning on or after January 1, 2002, and expires for taxable years that begin on or after January 1, 2005. The remainder of this section is effective when it becomes law.

SECTION 7.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(2a) That portion of a financial institution's interest expense that is allocable to interest income exempt from taxation under this Part. The allocable portion of the interest expense is the portion for which deduction would be disallowed pursuant to section 265(b) of the Code if the interest were earned on a tax-exempt obligation as defined in section 265(b) of the Code."

SECTION 7.(b) This section is effective for taxable years beginning on or after January 1, 2002, and expires for taxable years beginning on or after January 1, 2005.

SECTION 8.(a) G.S. 105-130.45 is repealed.

SECTION 8.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of income tax to the extent the underpayment was created or increased by this Part.

PART IV. EFFECTIVE DATES

SECTION 10. Except as otherwise provided in this act, this act is effective when it becomes law.

HOUSE BILL 99 (PCS):
Local Tax Menu & Other Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Michaux
Date:	July 23, 2002	**Analysis by:**	Finance Team
Version:	Draft		

SUMMARY:This bill provides for an accelerated sales tax swap, a menu of local revenue options, income tax rate increases for corporations and upper-income individuals, and repeal of special tax breaks for banks and cigarette manufacturers.

Part I of the bill accelerates and modifies the 2001 legislation establishing a sales tax swap, as follows:

- **Accelerates the effective date of the local option sales tax from July 1, 2003, to October 1, 2002.**
- **Increases the maximum rate of tax that may be levied under the new local option law from ½% to 2%**
- **Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.**
- **Repeals the hold harmless provision that would have gone into effect in 2003-2004.**
- **Accelerates the sunset of the State's extra ½% sales tax from July 1, 2003, to October 1, 2002.**

Part II of the bill gives counties the following additional local option revenue sources; if the tax is levied, the proceeds must be shared with municipalities in the same manner as local sales taxes under current law:

- **A local option meals tax of up to 2%**
- **A local option occupancy tax of up to 2%**
- **A local option income tax on residents of the county, up to a maximum surtax of 5% of each individual's State income tax liability.**

Part III of the bill makes the following income tax changes, effective beginning with the 2002 tax year. The bill waives any penalty for estimated tax underpayments as a result of these changes.

- **Temporarily increases the corporate income tax from 6.9% to the rate that was in effect from 1991 through 1996: 7.75%**
- **Temporarily increases by 1% the income tax rate on individuals in the top two tax brackets, and extends the sunset of the top bracket by one year.**
- **Temporarily eliminates the so-called "bank tax loophole", which allows a bank to deduct interest expenses on tax-exempt income.**
- **Accelerates the repeals of the income tax credit for manufacturing cigarettes for exportation, from 2005 to 2002.**

Local and State Sales Tax Changes.

The proposed committee substitute for House Bill 99 accelerates many of the provisions enacted last session and modifies others. The 2001 legislation authorized counties to levy additional local sales taxes of ½%, effective July 1, 2003. Under this bill, the rate that counties may levy is up to 2% and the tax may become effective as early as October 1, 2002. The tax rate may be in increments no smaller than ½%. The 2001 legislation imposed an additional State ½% sales tax that was set to expire July 1, 2003. The bill would sunset this State tax October 1, 2002. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax with only 48 hours' notice of the public meeting at which the county commissioners would adopt the resolution.
- It would allow the counties to enact the tax in 2002 with a shortened notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Like the existing State sales tax, the new local sales tax would not apply to food.[1] Unlike the tax authorized last year, this local sales tax could be enacted with only 48 hours (rather than 10 days) of public notice if the tax becomes effective on or before January 1, 2003. A county may choose to submit the question to the voters in a special election held after 30 days' public notice. If a county chooses to submit the question to the voters and the voters reject the tax levy, the county may not enact the tax for at least two years.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. If the county enacts the tax in 2002, the tax may become effective on the first day of October, November, or December 2002, as well as January 2003. For the tax to become effective October 1, 2002, a county must notify the Secretary of Revenue of the tax's imposition by August 15, 2002. If the tax is to become effective on November 1 or December 1, 2002 or January 1, 2003, the county must give the Secretary 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are reinstated.

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[1] The current two-cent local sales tax applies to food.

The net proceeds of the tax would be allocated among the counties as provided in the legislation enacted last year: one-half would be allocated on a point-of-origin basis and one-half would be allocated on a per capita basis.[2] Each county's allocation would then be divided between the county and the municipalities in the county using the same formula by which the existing local sales taxes are divided in that county.[3] As with the existing local sales taxes, the State's costs of collecting and administering the new tax come from the local tax proceeds.

Local Government Reimbursements.

In 2001, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002. The 2001 legislation would have provided local governments "hold harmless" payments beginning in 2003-2004 if the amount they could potentially realize from the levy of the half-cent sales tax was less than the amount they would lose from the reimbursements. This bill repeals the hold harmless provision.

State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

Local Option Revenue Sources.

Part II of House Bill 99 gives counties a menu of three additional local revenue sources, a meals tax, an occupancy tax, and an income tax. In each case, the tax levied by the county is allocated to that county and is then shared between the county and the city in the same way

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[2] Per capita distribution of a local tax probably violates the law of the land clause of the North Carolina Constitution, the uniformity requirements of the North Carolina Constitution, or both. The law of the land clause, which is equivalent to the due process clause of the federal constitution, prohibits the levying of a tax on one tax district for the benefit of another tax district. A local option sales tax with per capita distribution is such a tax: it is a county tax, levied by the board of county commissioners, on transactions within the county. The tax proceeds belong to the county; the constitution does not permit the county or the State to use these tax proceeds except for the benefit of the county. Distributing the county's tax proceeds throughout the State based on population violates the due process rights of the county's taxpayers. If the Statewide local option sales tax Article is viewed as a State tax for the benefit of all counties that choose to participate, it violates the uniformity requirement of Section 2 of Article V of the North Carolina Constitution, as interpreted by the North Carolina Supreme Court.

[3] The sales tax revenues are distributed between a county and its municipalities on either a per capita basis or an ad valorem basis. The county decides which distribution method it will use. The method may be changed each year.

that local sales taxes are shared under current law. There are no restrictions on the purposes for which local governments could use the proceeds of any of these taxes.

Section 2 authorizes counties to levy a local meals tax of up to 2%, in addition to any existing meals tax.[4] The tax rate may be in increments no smaller than ½%. The county may levy the tax after 10 days' notice and a public hearing, or the county may choose to submit the question for voter approval in a referendum. The tax would be collected by the county. The tax applies to the same prepared food and beverages that are currently taxable under existing local meals taxes.

The tax would not apply to any of the following:

- Prepared food served to residents in boarding houses and sold together on a periodic basis with the rental of a sleeping room or lodging.
- Sales exempt from the State sales tax.
- Sales made through vending machines.
- Prepared food subject to the occupancy tax because it is included in a single, non-itemized sales price for the rental of a room.
- Prepared food furnished without charge by an employer to an employee.
- Sales by grocers, other than sales of prepared food.

A nonprofit or governmental entity entitled to a refund of State sales tax on prepared food would also be entitled to a refund of the local meals tax.

Section 3 authorizes counties to levy a local occupancy tax of up to 2%, in addition to any existing local occupancy tax. The tax rate may be in increments no smaller than ½%. The county may levy the tax after 10 days' notice and a public hearing, or the county may choose to submit the question for voter approval in a referendum. The tax would be collected by the county. The tax would be administered in the same manner as existing county occupancy taxes. The uniform provisions for administering county occupancy taxes are set out in G.S. 153A-155.

Section 4 authorizes counties to levy a local income tax on residents of the county. The tax would be a surtax measured as a percentage of the amount of State income tax the individual owes, before any credits are subtracted. The maximum rate is 5% of State liability. The county may levy the tax after 10 days' notice and a public hearing, or the county may choose to submit the question for voter approval in a referendum. The tax would be collected by the Department of Revenue. The county must levy the tax by September 1 in order for it to become effective for tax years that begin the following January.

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[4] Four counties and one town are currently collecting a meals tax. They are Cumberland County (S.L. 93-413), Dare County (S.L. 91-177), Mecklenburg County (S.L. 89-821 and S.L. 89-922), Wake County (S.L. 91-954 and S.L. 95-458), and the Town of Hillsborough (S.L. 93-449 and S.L. 99-304).

Temporary Increase in Corporate Income Tax Rate.

Part III of House Bill 99 increases the corporate income tax rate from 6.9% to 7.75%, effective beginning with the 2002 tax year. This rate increase would sunset beginning with the 2005 tax year. 7.75% was the rate in effect during the 1991 through 1996 tax years.

Until 1987, North Carolina's corporate income tax rate was 6% of a corporation's State net income. In 1987, as part of a tax package that included repeal of the property tax on inventories, the corporate income tax was increased to 7%. One-half of the additional 1% was dedicated to public school capital needs. In 1991, as part of a legislative package that cut spending and raised revenues to make up a $1.2 billion shortfall, the corporate income tax rate was increased to 7.75% and a 4% surtax was enacted. The surtax was phased out over four years and expired January 1, 1995.

Effective beginning with the 1997 tax year, the General Assembly phased down the corporate income tax rate from 7.75% to 6.9% over a four-year period. The rate has been 6.9% since the 2000 tax year.

Temporary Increase in Individual Income Tax Rate for Upper-income Individuals.

Part III of House Bill 99 increases by 1% the individual income tax rate that applies to the top two income brackets, effective beginning with the 2002 tax year. It also extends from 2004 to 2005 the sunset of the top income bracket. These changes would sunset in 2005.

Until 1991, North Carolina's highest marginal income tax rate for individuals was 7%. This rate applied to North Carolina taxable income above $21,250. Effective beginning with the 1991 tax year, as part of a legislative package that cut spending and raised revenues to make up a $1.2 billion shortfall, the General Assembly added a third tax rate bracket of 7.75% for individuals with North Carolina taxable income above $100,000 (joint) or $60,000 (single). In 2001, the General Assembly added a fourth tax bracket with a marginal tax rate of 8.25% on North Carolina taxable income above $200,000 (joint) or $120,000 (single). It was estimated that roughly 2% of North Carolina taxpayers are in the fourth bracket. The fourth tax bracket was set to expire in 2004.

This bill would extend the sunset of the fourth tax bracket from 2004 until 2005. In addition, it would increase the marginal rate of the fourth tax bracket from 8.25% to 9.25% and the third tax bracket from 7.75% to 8.75%.

As of the end of the 1999 tax year, 43 states imposed a tax on individual income. Up to ten states had a marginal rate of tax that equals or exceeds 8.5%.[5] None of these states are

[5] California (9.3%), the District of Columbia (9.5%), Hawaii (8.75%), Iowa (8.98%), Maine (8.5%), and Montana (11%) all had marginal rates that equaled or exceeded 8.5%. Massachusetts had three flat rates of taxation that are applied to different sources of income. One of these rates is 12%. North Dakota had a marginal rate of 12%, though most taxpayers use an alternate calculation based on federal tax liability (14% of federal tax liability). Finally, Rhode Island and Vermont had an income tax calculated as a percentage of federal tax liability (26.5% for RI and 25% for VT). In 1999, the highest federal marginal tax rate was 39.6%.

located in the Southeast. The highest marginal tax rates on individual income in the four states that border North Carolina ranged from 5.75% to 7% in 1999.

Temporary Repeal of "Bank Tax Loophole".

Part III of House Bill 99 would reverse a corporate income tax interpretation allowing corporations engaged in the banking business to deduct interest expenses incurred in producing tax-exempt interest income[6]. Generally, other corporations are not allowed to deduct expenses incurred in producing tax-exempt income.

The North Carolina Corporation Income Tax Act provides in G.S. 105-130.5(a)(2) that interest paid in connection with tax-exempt income is not deductible. The statute makes no specific reference to financial institutions; however, in 1987, the Attorney General's Office issued an opinion interpreting the statute as not applying to corporations engaged in the banking business. Under this interpretation, banks and similar financial institutions are not required to include in taxable income interest expenses paid in connection with State tax-exempt income. One example of these expenses would be interest paid on deposits used to acquire federal obligations, the interest on which is exempt from State income tax.

Federal law formerly allowed the same special treatment to corporations engaged in the banking business but, since 1986, the federal deduction has been disallowed, with an exception for interest expenses in connection with tax-exempt obligations of "small issuers."[7] This bill would adopt the federal approach to deduction of interest expenses by corporations engaged in the banking business. Banking corporations would be required to allocate interest expenses between taxable and tax-exempt income based on a formula. Except as provided in the case of small issuers, those interest expenses allocable to exempt income would be includable in State net income; those interest expenses allocable to taxable income would be deductible.

Accelerate Repeal of Income Tax Credit for Cigarette Manufacturers.

Part III of House Bill 99 accelerates from 2005 until 2002 the sunset of the corporate income tax credit for manufacturing cigarettes for exportation. Effective beginning with the 1999 tax year, the General Assembly enacted a corporate income tax credit for manufacturers who produce cigarettes for exportation to a foreign country. The amount of the credit varies depending upon the amount of cigarettes exported in the tax year compared to the amount

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[6] This issue has been raised numerous times over the past seven years. Representative John Gamble introduced a similar proposal in 1995 as House Bill 171. House Bill 171 was reported unfavorably on May 17, 1995, by the House Committee on Financial Institutions. Representative Gamble introduced the proposal in 1997 as House Bill 325, which was referred to the Commerce Committee and postponed indefinitely on October 29, 1998. Representative George Miller introduced the proposal in 1999 as House Bill 1477. This bill was referred to Finance but no action was taken on it.

[7] An obligation is an obligation of a small issuer if, during the year the obligation is issued, the issuer is expected to issue no more than $10 million in obligations.

exported in 1998. The credit is set to expire in 2005. This bill would repeal the credit effective with the 2002 tax year.

The credit is a dollar amount per cigarette exported for those manufacturers who export at least 50% as many cigarettes in the taxable year as they did in calendar year 1998. The dollar amount ranges from forty cents to twenty cents per 1,000 cigarettes exported. The credit is capped at the lesser of $6 million per year or 50% of the manufacturer's corporate tax liability for any given year.[8]

[8] Prior to enactment of the act by the General Assembly in the 1999 Session, the issue was raised as to whether or not this tax credit violates GATT, one of the international trade agreements. The General Assembly staff was of the opinion that the tax credit violates GATT, while counsel for one of the four tobacco manufacturers disagreed. It is clear, however, that any challenge to the credit must come from a foreign government. If a foreign government challenges the credit, then the U.S. Justice Department may sue North Carolina. If the Department wins, then federal statute provides that relief is prospective only and persons who have already used the credit cannot be required to repay it. Private citizens have no cause of action on the issue.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.

DATE: July 23, 2002

TO: House Finance

FROM: Linda Struyk Millsaps, Richard Bostic, and David Crotts
Fiscal Research Division

RE: HB 99 – Local Tax Menu and Sales Tax Swap – PCS H99-CSLCx-102 [v.4]

FISCAL IMPACT

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

	Millions				
	FY 2002-03	**FY 2003-04**	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
REVENUES					
General Fund					
Local Reimbursements	333.4				
Sales Tax Repeal	(248.6)				
Increase Corp. Inc. Tax	119.1	93.9	54.3		
Increase Ind. Income Tax	347.7	318.8	213.1		
Bank Tax Deduction	85.0	85.0	85.0		
Repeal Cig. Export credit	9.0	8.0	8.0		
Net to State	**645.6**	**505.7**	**360.4**		
Local Governments					
Local Reimbursements	(333.4)				
DOR Administration	(0.3)				
Sales Tax	* See Assumptions and Methodology *				
Meals Tax	* See Assumptions and Methodology *				
Occupancy Tax	* See Assumptions and Methodology *				
Local Income Tax	* See Assumptions and Methodology *				
EXPENDITURES					
DOR Administration	0.3				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue and Local Governments.

EFFECTIVE DATE: Section 1.1 – 1.4 and (sales tax swap) becomes effective October 1, 2002. Section 1.8 (reimbursements) becomes effective July 1, 2002. Sections 6(b) and 7(a) are effective for taxable years beginning on or after January 1, 2001, and expire for taxable years that begin on or after January 1, 2005. The remainder of the bill is effective when law.

BILL SUMMARY: Part 1 of the bill authorizes local county commissioners to levy up to an additional 2-cent local sales tax, effective October 1, 2002. This tax would not apply to food. The resulting revenues from the new taxes would be distributed in the same manner as the current sales tax revenues, with ½ distributed on a point of origin basis and ½ on a per capita basis. It also makes conforming changes to the language to be used on the ballot, should county commissioners choose to place the local sales tax change before the public for a vote. This provision also limits the public notice requirement for the tax change to 48 hours. This same part of the bill repeals the local government reimbursements. This part of the bill also authorizes local governments to amend their budget ordinances to reduce the property tax levy if they receive additional and unanticipated revenues. The legislation shortens the notice counties must give to the Department of Revenue concerning their tax change, and gives that department authority to use up to $275,000 of the proceeds of the tax to fund implementation of the new tax. The bill exempts Department of Revenue from standard contract and bid requirements, but only as it relates to items needed to administer the additional local option sales tax. Finally, the bill revises the formula used to divide use tax proceeds between local governments and the state.

Part 2 of the bill authorizes all counties to levy three new taxes. Section 2 authorizes all counties to levy up to an additional 2% local prepared meals tax. This tax will be collected by the county, with the proceeds shared with associated municipalities in the same manner as local sales taxes (ad valorum or per capita distribution). The county commissioners are authorized to offer a referendum, with specific ballot language included. There are no restrictions on the use of the funds. This tax is in addition to any other prepared meals taxes currently in place. Section 3 of the bill authorizes all 100 counties to levy a room occupancy tax of up to an additional 2%. This tax will also be collected by the county, with the proceeds shared with its associated municipalities in the same manner as local sales tax revenues. County officials may place this issue on the ballot, although it is not required. The use of the proceeds of the tax is not restricted. Section 4 of the bill creates a local government income tax that may not exceed 5% of the amount of state income tax imposed on a taxpayer before the subtraction of any credits. A county will impose the local income tax by referendum or by resolution. If approved by September 1, it would become effective for the taxable year beginning the next January 1. The Department of Revenue allocates the tax to the counties quarterly and then distributes the tax proceeds to counties and cities on the same basis as local sales tax.

Part 3 makes three changes to state income tax laws. Section 5 increases the corporate income tax from the current rate of 6.9% to 7.75%, effective for tax years 2002-2004. Section 6 temporarily increases the top two individual income tax brackets from 7.75% and 8.25% to 8.75% and 9.25%. Section 7 temporarily prohibits a bank from deducting interest expenses incurred in producing tax-exempt interest income. Section 8 moves the sunset on the cigarette manufacturing export tax credit from tax years beginning on or after January 1, 2005 to January 1, 2002.

ASSUMPTIONS AND METHODOLOGY:

Part 1: Local Sales Tax Swap

There are effectively three items in this part of the bill: repeal of the local government reimbursements; authorization for local units to levy additional sales taxes; and a repeal of the state's most recently enacted 1/2 cent.

Reimbursements: Since 1979, the General Assembly has made several changes to tax law that impact local governments. The state's cities and counties have received reimbursements from the state for some of these losses, particularly as they relate to the sales and property tax bases. The state reimburses local governments for property tax losses related to the repeal of taxes on inventories and intangibles, as well as some of the losses associated with the homestead exemption. Locals also receive a reimbursement for sales taxes that are no longer paid on items purchased with food stamps.

According to the Department of Revenue's Tax Research Division, annual reimbursements are as follows:

Reimbursement	Amount (Millions)
Food Stamps	$6.4
Intangibles	$128.7
Homestead	$8.2
Retail & Wholesale Inventory	$82.0
Manufacturers Inventory	$108.1
TOTAL	$333.4

The bill repeals all of these reimbursements. Because these reimbursements are repealed under current law in July 2003, only one year of reimbursements are shown in the fiscal impact box. This amount is shown as a loss for local governments and a gain for the state.

Additional Local Sales Taxes: Fiscal Research believes that in FY 2001-02, each penny of local sales tax generated $716.8 million in revenue. (This estimate does not include food.) Using a growth rate of 1.2% suggests the following non-food, sales tax revenue stream for FY 2002-03:

millions

Fiscal Year	Revenue from 1 Cent	Revenue from 1/2 Cent
2002-03	$725	$1,451

Once adjustments are made for the October effective date, the total estimated statewide potential revenue available to local governments from this additional two cents is approximately $994.4 million. However, since the language is permissive and counties can decide to enact the tax at

any time, or at any 1/2-cent increment between 0 and 2%, no exact fiscal estimate is possible on this portion of the bill.

Fiscal Year	2 Cents Additional
2003-04	1,521,892,557
2004-05	1,599,509,077
2005-06	1,673,086,495
2006-07	1,750,048,474
2007-08	1,830,550,703

The out year estimates assume sales tax growth between 4.6% and 5.1%. These estimates are based on historic data and projections provided by *Economy.com.*

Repeal State ½ Cent Sales Tax: As was noted earlier, Fiscal Research believes that in FY 2001-02, each penny of local sales tax generated $716.8 million in revenue. (This estimate does not include food). Using a growth rate of 1.2% suggests the following non-food, sales tax revenue stream for FY 2002-03:

Millions

Fiscal Year	**Revenue from 1/2 Cent**	**Revenue from 1 Cent**
2002-03	$ 362.7	$725.4

Under current law, the state is scheduled to repeal the most recent ½ cent of state sales tax, effective July 1, 2003. This bill moves that repeal date forward to October 1, 2002, effectively removing nine (9) months of revenue from the state. Once adjustments are made for the October 1 date, the bill would cost the state approximately $248.6 million in sales tax revenue. Because that tax is scheduled for repeal in 2003-04, the fiscal impact is only shown in 2002-03.

Use Tax Revision: Section 1.5 modifies the distribution of the local portion of use taxes collected on the individual income tax form. North Carolina consumers have been liable for use tax payments on all purchases on which sales tax are not collected since 1939. The use tax is imposed at the same rate as the sales tax and is designed to capture the revenue lost through sales by retailers that do not collect North Carolina sales tax. Unlike the retail sales tax that is collected by the merchant, the consumer pays the use tax directly to the state. From a practical standpoint, the use tax generally applies to traditional out of state purchases for consumption in North Carolina, or those sales made through a catalog or mail order company. The 1999 General Assembly approved HB 1433 to simplify use tax collection by providing that the use tax will be paid on the taxpayer's income tax return. That legislation also indicated that the state should forward one-third of the proceeds collected on this line to the state's counties and cities in proportion to their total local sales tax payments. At that time, the combined state rate was 6%, with 2% or one-third of that amount being local sales taxes. Since that time, the combined state rate has increased to 6.5% and could go to 7.0% under the provisions of this bill. As a result, one-third is no longer the appropriate proportion to forward to local governments.

The Department of Revenue reports collecting approximately $4.5 million in use taxes off of the individual income tax returns for calendar year 2001. The distribution formula in existing law, the standard sales tax growth rates, and an adjustment factor for a higher sales tax rate, are used to compute the following revenue stream:

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,000,000	$3,187,800	$3,176,802	$3,510,684	$3,672,175	$3,841,096
Local	$1,500,000	$1,593,900	$1,588,401		$1,836,088	$1,920,548
TOTAL	**$4,500,000**	**$4,781,700**	**$4,765,203**	**$5,266,026**	**$5,508,263**	**$5,761,643**

The bill requires that the proportion of the tax paid to local units reflect what proportion of the general rate is actually local tax. Therefore, under the current rate structure, local units should receive 30.8% of the revenue (2.0% is 30.8% of a 6.5% tax). If the new rate in this bill is used, locals should receive 35.7% of the funds (2.5% is 35.7% of a 7.0% rate). When the state's extra ½ cent is repealed in July 2003 the locals should begin receiving 38.5% of the revenue (2.5% is 38.5% of a 6.5% rate). Using these ratios suggests the following new revenue streams:

	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,000,000	$3,191,785	$2,997,313	$3,238,606	$3,387,582	$3,543,411
Local	$1,500,000	$1,589,915	$1,767,890	$2,027,420	$2,120,681	$2,218,233
TOTAL	$4,500,000	$4,781,700	$4,765,203	$5,266,026	$5,508,263	$5,761,643

Note: Because individual income tax returns reflect purchases made during a calendar year, and all sales tax rate changes become effective in July, the average of the two fiscal year's proportions are used to determine the division of state and local revenue.

The projected potential revenue changes as a result of this bill are as follows:

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
State	$3,985	($179,489)	($272,078)	($284,594)	($297,685)
Local	($3,985)	$179,489	$272,078	$284,594	$297,685

However, because the provision that allows this item to remain on the individual income tax return expires with tax year 2002, the only impact seen as the result of this bill is the first fiscal year.

Part 2: Local Option Revenue Sources

This part of the bill allows county commissioners to levy three (3) additional local taxes – an additional 2% meals tax, an additional 2% room occupancy tax, and a local income tax of up to 5%.

Meals Tax: The latest statewide data for prepared food and beverage sales is found in the Department of Revenue's FY 2000-01 State Sales and Use Tax Statistics. The gross retail sales for category 306 (restaurants, cafeterias, grills, snack bars, etc.) and category 308 (taverns,

nightclubs, etc.) totals $8,453,055,971. To estimate the food and beverage sales in current fiscal year 2002-03 and future years, the National Restaurant Association recommends an industry growth rate of 6.9% a year. The chart below shows the annual impact of a 2% meals tax if imposed by all counties in the state. For example, the meals tax in all counties in FY 2003-04 will generate approximately $205.4 million.

FY	Statewide Food & Beverage Sales	2% Meals Tax
00-01	$8,453,055,971	$169,061,119
01-02	$9,019,410,721	$180,388,214
02-03	$9,623,711,239	$192,474,225
03-04	$10,268,499,892	$205,369,998
04-05	$10,956,489,385	$219,129,788
05-06	$11,690,574,174	$233,811,483
06-07	$12,473,842,644	$249,476,853

However, because the legislation is permissive, and the tax increase can vary between 0% and 2%, no exact fiscal estimate is possible on this portion of the bill.

Occupancy Tax: In 1999-00 sixty-five (65) counties levied a room occupancy tax, with rates varying between 1% and 6%. Examining the revenues from these localities suggested that each 1% room tax raised $17,952,238. These numbers, adjusted by growth rates to be discussed below, were used as the basis for the estimates in 65 counties. For the remaining thirty-five counties, Fiscal Research examined county-by-county 1997 economic census data for sales in the category of "accommodation". A 1% tax rate was then applied to the gross sales numbers provided by the census, and growth rates were applied. This suggested potential revenue on a 1997 base of $1,414,060.

A 4% annual growth rate in hotel/motel sales from the U.S. Census Bureau is used to inflate the 1997 census data to the 1999-00 baseline. All figures were then grown forward one year by that same 4% rate. In 2000-01 through 2002-03, a lower growth rate of 2% is used because of the recent economic slowdown. Four percent (4%) growth is anticipated in the following years. Actual growth will vary by location, year, and construction plans.

Using this methodology, Fiscal Research estimates the following potential revenue stream:

Fiscal Year	1% Revenue	2% Revenue
2002-03	21,112,593	42,225,185
2003-04	21,957,096	43,914,193
2004-05	22,835,380	45,670,760
2005-06	23,748,795	47,497,591
2006-07	24,698,747	49,397,494

However, because the language is permissive, and the new tax rate can vary between 0 and 2%, no exact fiscal estimate is possible on this portion of the bill.

Income Tax: Tax year 2003 is the first year a local income tax can be imposed. The Fiscal Research Division General Fund Revenue Forecast estimates that individual income tax collections will be $7.38 billion in 2003. Since the local income tax is applied only to state residents and is imposed on the state tax due before credits are subtracted, this collection estimate must be adjusted for these two factors. The Individual Income Tax Model created by the Barents Group for the Fiscal Research Division and the Department of Revenue's Tax Research Division, projects that $226 million of the tax collection estimate for 2003 is from out of state filers. The model also estimates that state residents will take $311 million in state tax credits in 2003. After subtracting the out of state filers and adding back the credits, the base for local income tax in 2003 is $7.46 billion. If all 100 counties impose the maximum local income tax, the revenue generated in tax year 2003 and collected in FY 2003-04 will be $373 million. The chart below shows the maximum tax that will be generated over fiscal years 2003-04 through 2006-07.

			(Million)		
	Individual				
	Income Tax		Out of State	Local Income	If 5% tax
	Collection	Tax Credits	Filers	Tax Base	Imposed
TY 2003	$7,375.6	$311.0	$226.0	$7,460.6	$373.03
TY 2004	$8,091.0	$315.9	$246.6	$8,160.3	$408.02
TY 2005	$8,850.6	$320.4	$266.5	$8,904.5	$445.23
TY 2006	$9,365.5	$325.2	$287.8	$9,402.9	$470.14

However, because the legislation is permissive, and the tax rate can vary between 0% and 5%, no exact fiscal estimate is possible on this portion of the bill.

NOTE: Because the combined impact of these provisions could be substantial, some change in purchasing decisions may result.

Part 3: Income Tax Changes

Part 3 makes several changes to state income tax laws and rates.

Corporate Income Tax Imposed: This estimate is tied to the corporate income tax forecast built into the overall General Fund revenue estimate for 2002-03 and future years. The starting point for that estimate is the July, 2002 projection of U. S. pretax corporate profits made by Economy.Com, the forecasting unit contracted with by Fiscal Research (FRD). The calendar year growth rates in this forecast are applied to an FRD estimate of 2001 tax year North Carolina taxable income. The FRD estimate was based on a model that allocates monthly corporate income tax collection and refund data to the respective tax year, assuming that all taxpayers have the same fiscal year as the calendar year. (Note: The Department of Revenue does not have corporate income tax data broken down between fiscal year corporations and calendar year

taxpayers.) Finally, the estimated was adjusted downward by 10% to account for the fact the collections based liability estimate includes some receipts that represent late payments from prior tax years.

The calendar year estimates are converted to the state fiscal year by assuming that 90% of the annual tax liability is extinguished through quarterly estimated tax payments made during the tax year and the remainder through final payments due with the annual return in March. For the 2002 tax year there is a forgiveness of estimated tax payments. This means that for the 2002-03 fiscal year the state will receive the full amount of the 2002 tax year (in March 2003) and 45% of the 2003 tax year (in April and June 2003).

Increase Tax Rate on Top Tax Brackets: Until tax year 2004, the individual income tax rates are 6%, 7%, 7.75% and 8.25% as shown below. The 8.25% tax bracket is repealed beginning in tax year 2004.

Filing status		Taxable income is more than	But not over
Single	6%	$0	$12,750
	7%	$12,750	$60,000
	7.75%	$60,000	$120,000
	8.25%	$120,000	
Head of Household	6%	$0	$17,000
	7%	$17,000	$80,000
	7.75%	$80,000	$160,000
	8.25%	$160,000	
Married Filing Jointly or Qualifying Widow(er)	6%	$0	$21,250
	7%	$21,250	$100,000
	7.75%	$100,000	$200,000
	8.25%	$200,000	
Married Filing Separately	6%	$0	$10,625
	7%	$10,625	$50,000
	7.75%	$50,000	$100,000
	8.25%	$100,000	

Section 6 of the bill increases the tax rate on the top two tax brackets for tax years 2002, 2003, and 2004. The current 7.75% bracket in each filing status category is increased to 8.75% and the current 8.25% bracket is increased to 9.25%.

In tax year 2002, this tax increase will impact 11,982 single filers, 50,574 married couples, and 1,496 heads of households. The revenue estimates for the new tax brackets were calculated using the North Carolina Individual Income Tax Model. The model was updated by the Barents

Group in 2002 with economic forecasts from *Economy.com*. The projected revenue gain for the temporary tax increase is shown below.

FY 2002-03	$347.7 mil.
FY 2003-04	$318.8 mil.
FY 2004-05	$213.1 mil.

First year revenues equal all of Tax Year 2002 for returns filed in spring 2003 and 45% of Tax Year 2003 because of withholding and two quarterly estimated payments. High-income taxpayers avoid a penalty if estimated payments during the tax year equal at least 90% of actual liability. In FY 2003-04, taxpayers will pay the remaining 55% of the tax due in tax year 2003 and again pay 45% in estimated payments for tax year 2004. FY 2004-05 is equal to the remaining 55% of tax year 2004.

Repeal Bank Tax Deduction: Analysis of the bank tax deduction in 2001 indicated that the revenue gain to the state from closing the "loophole" would be between $85 – 114 million annually. This estimate is derived using data contained in the Federal Deposit Insurance Corporation (FDIC) Consolidated Reports of Income for the eight largest North Carolina banks. The data in the Consolidated Reports of Income do not reflect the banks' deductions for North Carolina state income tax purposes, but rather the national deductions for North Carolina banks. Data for smaller banks were not collected, as the majority of these banks are considered small issuers with less than $10 million in federal obligations. The annual deductions attributable to the "loophole" were collected for the eight nationally franchised North Carolina banks for years 1997, 1998, 1999, and the first two quarters of 2000. A time series analysis was used to estimate the total national deduction for the year 2000.

To estimate the state tax deduction, the ratio of assets held in North Carolina to those held nationally was established. The ratio of state deposits to total national deposits reflected a similar ratio. This ratio was then used to adjust the total national deduction amount to estimate a state deduction amount. The state deduction was then multiplied by the North Carolina corporate income tax rate to estimate the $84 – 114 million total exemption for the state. The low estimate in this range reflects the deduction taken in 1997, while the $114 million estimate reflects the larger deduction amount estimated for 2000. For this fiscal memo, the lower $85 million estimate is assumed each year.

Repeal Cigarette Export Credit: Currently this credit is capped at $12.0 million annually. However, the Department of Revenue has indicated that actual usage of the credit for the 2000 tax year was $6.7 million. No newer numbers from actual returns are available. However, discussions with industry representatives and the Department of Commerce indicate that a 2002-03 estimate of $9.0 million and an out year estimate of $8.0 million is appropriate.

House Bill 99 (PCS) Local Tax Menu and Other Tax Changes

Part I - Local Sales Tax Swap

1. State sales tax reduced 1/2% effective October 1, 2002
2. Counties may levy up to 2% local sales tax
3. Earliest effective date is October 1, 2002
4. Referendum is optional
5. Only 48 hours public notice need be given
6. Reimbursements repealed July 1, 2002
7. Tax is distributed among taxing counties half per capita and half point of origin
8. Within each county, the proceeds are shared with the cities in the same manner as existing local sales taxes
9. Local governments may reduce property taxes after July 1 to account for unanticipated revenues
10. To expedite implementation: shortened notice requirements to DOR; DOR can withhold $275,000; and DOR is exempted from bidding requirements

Part II - Local Option Revenue Sources

1. Local Meals Tax
   - Counties may levy up to 2% local meals tax
   - Referendum is optional
   - Tax is collected by county
   - County must share tax proceeds with cities in the same manner as local sales tax
   - No restrictions on what the proceeds may be used for

Local Occupancy Tax

- Counties may levy up to 2% local occupancy tax
- Referendum is optional
- Tax is collected by county
- County must share tax proceeds with cities in the same manner as local sales tax
- No restrictions on what the proceeds may be used for

2. Local Income Tax
   - Counties may levy income tax on residents of county
   - Referendum is optional
   - Tax is a surtax -- a percentage of NC income taxes (before subtraction of credits)
   - Maximum rate is 5%
   - Tax is collected by State
   - Proceeds are allocated to county on a point of origin basis
   - Proceeds shared between county and cities in the same manner as local sales tax

Part III - Income Tax Changes

- Raise corporate income tax from 6.9% to 7.75% effective 2002, sunset 2005 (HB 1656)
- Raise by 1% the income tax rate that applies to taxpayers with income above $100,000 (joint return)/$60,000 (single return) effective 2002, sunset 2005. This also involves extending by one year the sunset on the upper income bracket added in 2001. (HB 1656)
- Repeal the bank tax loophole effective 2002, sunset 2005 (HB 1551)
- Repeal the income tax credit for manufacturing cigarettes for export effective 2002 (HB 1550)

(Revised 6-02)

ROLL CALL VOTE

15 YES ___ NO = 14 (TOTAL)

HB# ___
SB# ___

Weiss 2nd motion

HOUSE STANDING COMMITTEE ON FINANCE

House Subcommittee on Home Fairness

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander	✓		Wainwright		
Allen	✓		Weiss	✓	
Blust		✓	Willingham	✓	
Buchanan		✓	Wilson		✓
Capps		✓	Womble	✓	
Cox	✓				
Decker		✓			
Dedmon	✓				
Eddins					
Edwards					
Gibson	✓				
Gray		✓			
Hackney (Speaker Pro Tem)	✓				
Hill	✓				
Holliman	✓				
Hurley	✓				
Jarrell	✓				
Johnson		✓			
Luebke	✓				
McComas		✓			
McCombs		✓			
McMahan		✓	Ex officio Members		
Morris		✓	Majority Leader Baddour		
Pope		✓	Majority Whip Earle		
Rayfield		✓	Majority Whip Cunningham	✓	
Starnes		✓			

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 99 DATE _____

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

COMMITTEE SUBSTITUTE PCS

(Rep.) Sen.) Weiss

moves to amend the bill on page 1, lines 1-2

(✓) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"AN ACT TO AUTHORIZE COUNTIES TO LEVY ~~1~~ THE HALF-CENT SALES TAX BY OCTOBER 1, 2002, TO REPEAL";

and on ~~page~~ page 1, lines 16 & 18 by removing the italicizing of the underlined words on each line;

and on page 2, lines 2 ~~1~~, and 7-8 by deleting the phrase "two percent (2%)" each place and substituting "one-half percent (½%)";

and on page 3, lines 1-3, by deleting the underlined sentence;

and on page 5, line 31, through page 10, line 34, by deleting the lines.

SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

(Revised 6-02)

ROLL CALL VOTE

20 YES 9 NO = 29 (TOTAL)

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON FINANCE Wilson Amendment

House Subcommittee on Finance

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		
Allen		✓	Weiss		✓
Blust	✓		Willingham		✓
Buchanan	✓		Wilson	✓	
Capps	✓		Womble	✓	
Cox	✓				
Decker	✓				
Dedmon	✓				
Eddins					
Edwards					
Gibson	✓				
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill	✓				
Holliman	✓				
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs	✓				
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour		
Pope	✓		Majority Whip Earle		
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 99

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

H99-ALC-175 [v.4]

Date _____,2002

Comm. Sub. [YES]
Amends Title [YES]
PCS

Representative C. Wilson

moves to amend the bill on page 1 line 3,
by adding the phrase "SUBJECT TO APPROVAL BY THE VOTERS," after the phrase "TAXES";

and on page 1, line 26, through page 2, line 13, by rewriting the lines to read:

"(a) ~~After Vote.~~Authority. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the taxes in a county, the board of commissioners of a county may, by resolution, levy one—half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

~~(b) Without Vote. If the question of whether to levy taxes under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy one half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.~~ "

and on page 6, lines 1-10, by rewriting those lines to read:"(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of county commissioners may, by resolution, levy a local meals tax

up to the rate approved in the referendum, but not more than two percent (2%), in addition to any other State and local sales and use taxes and meals taxes levied pursuant to law. The tax applies to the sales price of prepared food and drink sold within the taxing unit at retail, for consumption on or off the premises, by a retailer within the taxing unit that is subject to sales tax under G.S. 105-164.4(a)(1). A meals tax must become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(b) Vote. – The board of county commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local meals tax in the taxing unit as provided in this Article. The election shall be held on a date jointly agreed upon by the governing body and the board of elections and shall be held in accordance with the procedures of G.S. 163-287.";

and on page 8, lines 12 – 21, by rewriting the lines to read:

"(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of a county may, by resolution, levy a local occupancy tax up to the rate approved in the referendum, but not more than two percent (2%). The tax applies to the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the taxing unit that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). The tax is in addition to any State or local sales tax.

(b) Vote. – The board of commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local occupancy tax in the taxing unit as provided in this Article. The election shall be held on a date jointly agreed upon by the governing body and the board of elections and shall be held in accordance with the procedures of G.S. 163-287.";

and on page 9, lines 25 – 34, by rewriting the lines to read:

"(a) Authority. – If the majority of those voting in a referendum held pursuant to this Article vote for the levy of the tax, the board of commissioners of a county may, by resolution, levy a local income tax on residents of the taxing unit up to the rate approved in the referendum, but not more than five percent (5%). The tax is calculated as a

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 99

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

H99-ALC-175 [v.4]

percentage of the North Carolina income tax of every individual who is a resident of the taxing unit as of the end of the taxable year. If the resolution is adopted before September 1, the tax becomes effective for taxable years beginning on or after the following January 1. If the resolution is adopted on or after September 1, the tax becomes effective for taxable years beginning on or after January 1 of the second calendar year following adoption of the resolution.

(b) Vote. – The board of commissioners may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local income tax on residents of the taxing unit as provided in this Article. The election shall be held on a date jointly agreed upon by the governing body and the board of elections and shall be held in accordance with the procedures of G.S. 163-287."

SIGNED Connie Wilson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

(Revised 6-02)

ROLL CALL VOTE

10 YES 19 NO = 29 (TOTAL)

HB# 99
SB# ____

HOUSE STANDING COMMITTEE ON FINANCE

Cunningham Motion to send to study

House Subcommittee on Home Finance

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander	✓		Wainwright		
Allen	✓		Weiss	✓	
Blust		✓	Willingham	✓	
Buchanan		✓	Wilson		✓
Capps		✓	Womble	✓	
Cox		✓			
Decker		✓			
Dedmon		✓			
Eddins					
Edwards					
Gibson	✓				
Gray		✓			
Hackney (Speaker Pro Tem)	✓				
Hill		✓			
Holliman		✓			
Hurley	✓				
Jarrell		✓			
Johnson		✓			
Luebke	✓				
McComas		✓			
McCombs		✓			
McMahan		✓	Ex officio Members		
Morris		✓	Majority Leader Baddour		
Pope		✓	Majority Whip Earle		
Rayfield		✓	Majority Whip Cunningham	✓	
Starnes		✓			

MINUTES
HOUSE COMMITTEE ON FINANCE

July 24, 2002

The House Committee on Finance met at 8:30 a.m. on Wednesday, July 24, 2002 in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Earle, and Cunningham. Staff persons present included: Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, Martha Harris, Martha Walston, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Agenda and Visitor Registration Sheet are incorporated into the minutes as **Attachments 1 and 2.**

Representative Wainwright called the meeting to order and introduced the Pages, Clark Leonard and Lauren Knish, and Sergeant at Arms, Dusty Rhodes, Walter Spell, Matt Myers, and Bill Freeman. The bill before the committee was S.B. 1292
A BILL TO BE ENTITLED AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999. -Representative Buchanan moved for the adoption of the Proposed Committee Substitute (PCS) for discussion by the committee and the motion carried. Representative Wainwright recognized Representatives Luebke and Baddour to explain the bill. The PCS, Bill Analysis, Fiscal Note, and 2002-03 Sales Tax Swap chart are incorporated into the minutes as **Attachments 3 through 6.**

Representative Luebke stated that the PCS had the loophole bill and a sales tax swap was added to provide some relief for the counties. The changes to the loophole bill involved accelerated depreciation and a change in the language of the throw-out section of the bill. Representative McMahan had offered an amendment to the bill at a previous meeting, and the adopted amendment was included in the PCS that was currently before the committee. Representative Luebke asked Staff Attorney, Canaan Huie, to explain the McMahan amendment.

Mr. Huie explained that the amendment dealt with the add-back of bonus depreciation and could be found on Page 5, Section 3.2(a) and Section 3.2 (b) of the PCS. Under this amendment there is 100% add back in the 2001-2002 years, a 70% add back in 2003, and 0% in 2004. This provision expires September 11, 2004. Beginning in 2005 for five taxable years, the taxpayer would be allowed to take 20% of the amount that had been added back in a previous year.

Representative McMahan stated that the economy needed to be stimulated earlier than what the federal law would allow. The amendment would generate some new money and cost businesses the first year, but would become revenue neutral the second year using the 70% factor, and the third year would be as though the 30% bonus was applied completely. If necessary, the legislature would have an opportunity to revisit the matter the third year.

Representative Womble asked what were the changes to the named loopholes, and what new loopholes were proposed. Mr. Huie explained that on Page 11, Section 9.2 there was a correction to the throw out rules. It now only throws out sales to U.S. Government and sales that occur in a state or a foreign country where the taxpayer is not taxable. "Taxable" refers to whether the state or country of jurisdiction has the authority to levy a tax, whereas as "taxed" refers to whether that state or country of jurisdiction has decided to levy a tax. The only changes to the bill were the correction to the throw out rules, the bonus depreciation, and the addition of the sales tax swap.

Representative Pope stated that he supported the amendment. He commented that this bill raised taxes $38 million dollars for businesses this year. He also pointed out that of the surrounding states, Tennessee was the only state that was imposing this tax. Tennessee had no personal income tax, and they had chosen the 100% add back. He expressed concern that this bill raised taxes for this year on new investments in a time of recession, which hurt jobs. Representative Hackney stated that it was misleading to say it was a new tax when it was not a new tax. Congress gave a large accelerated depreciation benefit and North Carolina was not recognizing that depreciation at one time.

Representative Wilson asked if there were any changes to the fiscal effect of the throw out rule and the business income from the last bill and the PCS. David Crotts of Fiscal Research stated that there was no change. Representative Wilson offered an amendment. Representative Wainwright stated that they would come back to the amendment after the discussion of the sales tax swap. He recognized Representative Baddour to explain the sales tax swap portion of the bill.

Representative Baddour stated that the PCS was a compromise. Because of objections to the 7% sales tax for the counties, some changes were made to the PCS. The County Commissioners and the League of Municipalities approved of the changes in the PCS. The PCS accelerated the 2001 legislation establishing a sales tax swap, as follows:

- Accelerates the effective date of the local option sales tax from July 1, 2003, to January 1, 2003.
- Accelerates the sunset of the State's half-cent sales tax from July 1, 2003, to January 1, 2003.
- Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.
- Does not accelerate the hold harmless for local governments beginning in the 2003-2004 fiscal year and sunsets the hold harmless provision in 2012.

Representative Baddour stated that Ron Aycock, Executive Director of the North Carolina Association of County Commissioners and S. Ellis Hankins, Executive Director of the North Carolina League of Municipalities, had written letters stating their support of the legislation and asked that the Chair recognize them to speak on the bill. **(Please refer to Attachments 7 and 8).** Mr. Aycock expressed concern about the impact on the counties. Mr. Hankins stated that this PCS made it harder for the Governor to withhold funds that belonged to the municipalities. Representative McMahan stated that he would support the bill. Representative Capps felt that the state should give the counties all of their money. Representative Pope stated that this was a step in the right direction, and was better than nothing for the counties.

Representative Wainwright recognized Representative Wilson to explain her amendment. The amendment would amend Page 1, Line 4 of the PCS. **(Please refer to Attachment 9).** Representative Wilson moved for the adoption of the amendment and called for a roll call vote. Representatives Luebke, McMahan, Jarrell, Mr. Ron Aycock, and Mr. Hankins spoke in opposition to the amendment. Representative Blust and Decker stated they would support the amendment. The vote on the amendment was 12 in the affirmative to 21 in the negative. The amendment failed. **(Please refer to Roll Call Vote Attachment 10**).

Representative Gray sent forth an amendment to amend the bill on page 4, line 35, and moved for its adoption. **(Please refer to Attachment 11)**. The amendment addressed the hold harmless agreement for the counties. The amendment would affect ten counties, Anson, Davie, Durham, Edgecombe, Forsyth, Granville, Hoke, Rockingham, Scotland, and Stokes. These counties would be held harmless from January 1 through June 30 at a cost to the state of $5.47 million. The reimbursement would be for the excess over the repealed reimbursement over three times the estimated tax amount. Some members expressed their concern that not all counties were included in the amendment. Mr. Hankins spoke in opposition to the amendment. The amendment was adopted. Representative Baddour move for a favorable report of the Proposed Committee Substitute as amended. A roll call vote was requested and the Amended Proposed

Committee Substitute was approved by a vote of 23 to 10. **(Please refer to Attachment 12).**

The meeting adjourned at 9:50 a.m.

Respectfully submitted,

Blinda Edwards, Committee Assistant

Representative William L. Wainwright
Presiding Chair

Attachment 1

AGENDA

House Finance Committee

July 24, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1292 **Budget Revenue Act of 2002**

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

FINANCE — Name of Committee

JULY 24, 2002 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
~~Kelly Hunter~~	~~UC State Watch~~
Bill Spencer	NCDOR
David Baker	NCDOR
Eddie Finch	NCDOR
Doug Shue	Sanford, N.C.
Ron McKillin	Moore & Van Allen
Shayna Waites	intern
Kim Leonard	NCDOA
Becky Brown	NCDOR
Andy Udell	SENC
John McMillan	Mayo & S P.A.
Willie Riddick	DOR
Charles Heatherly	Citizen
Larry Beverly	LOB
Kelley Shuffstetter	The Capitol Group

VISITOR REGISTRATION SHEET

FINANCE — JULY 24, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCRA
Phil Kish	NCCBI
Leslie Bevacqua	NCCBI
Jan Childs	NCASA
Jim Blackburn	NC Association of County Commissioners
Ron Aycock	" "
Paul Coleman	Catawba County Govt
Alice Garland	EC
Debra Dew	BellSouth
FRAN PRESTON	NCAM
Bill Rustin	Assn of Comm Pharmacy
Harry Kaplan	NCAHP
Katherine Joyce	Electric Cooperatives

VISITOR REGISTRATION SHEET

FINANCE — JULY 24, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Amy Fulbright	Hunton & Williams
Julie Woodson	NCCBI
Sandy Sanderford	WCSR
Angie Hamm	MTE
Ed Turlington	Brooks Pierce
Natalie English	Charlotte Chamber
Pam Wyatt	Sprint
Mary Lentz	BellSouth
DAVID BARNES	Poyner + Spruill LLP
Stan Pace	Verizon
[illegible]	[illegible]
SAM JOHNSON	ATTY
Amy McElwee	VNC-CH
Roger Bone	Bone Assoc
Erik Culbreth	LBA

VISITOR REGISTRATION SHEET

FINANCE — JULY 24, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R.E. McManus Jr.	Georgia-Pacific Corp
James M. Bell	NC Manufacturers
Andy Romanet	NCLM
Neil Jonas	NC Political Review
Goofy	
Becky Mercer	Mercer & Assoc.
Theresa Rodriguez	CAA
Dean Plunkett	NC Beer & Wine.
Chris Fitzsimon	Common Sense
Kim Carton	NC BTC
Susan Markham	PENC
Jeff Lipe	Bayer
Dick Carlton	Carlton & Alexander PLC
Preston Howard	MCZC

VISITOR REGISTRATION SHEET

FINANCE — JULY 24, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lennie Collins	NC DOR
Sabra Faires	NC DOR
	ARRA
Jim Bennett	NCCFTF
Tim Holmes	N.C. D.O.R
Mary Carmilia	REBIC
Stephanie Mansur	NC Assn. of REALTORS, INC.
Tim Minton	NC Home Builders Assn
	Capitol Group
	NCFPC
Brian Francis	Meck Cnty
William H Potter Jr	NCDS & NCPTA
Sara Reins	Rep Luebke's office
	H&W/Phillip Morris

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S D

SENATE BILL 1292
Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
House Committee Substitute Favorable 7/17/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-PCS4744-LYx-46

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL LOCAL OPTION SALES TAX, THE REPEAL OF REIMBURSEMENTS, AND THE DECREASE IN THE STATE SALES TAX RATE; TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES OF TANGIBLE PERSONAL PROPERTY IN ANOTHER STATE OR COUNTRY WHERE THE SALES ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO

AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE SALES TAX SWAP

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July~~ January 1, 2003."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

[ ] FOR [ ] AGAINST

one-half percent (1/2%) local sales and use taxes, to replace the current one-half percent (1/2%) State sales and use taxes that end ~~July~~ January 1, 2003."

SECTION 1.3. G.S. 105-521(a)(3) reads as rewritten:

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

...

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections."

SECTION 1.4. G.S. 105-521, as amended by this act, is repealed effective July 1, 2012.

SECTION 1.5. Section 13(g) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(g)** This section becomes effective ~~July 1, 2003,~~October 1, 2002, and applies to amounts collected on or after that date."

SECTION 1.6. Section 34.13(c) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ January 1, 2003. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 1.7. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their~~

~~total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed under this section."

SECTION 1.8. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.9. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month beginning on or after ~~July 1, 2003.~~January 1, 2003, and on or before July 1, 2003. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before July 1, 2003, the county is required to give the Secretary of Revenue only 30 days' advance notice of the tax levy. For taxes levied ~~on or~~under Article 44 of Chapter 105 of the General Statutes that become effective after ~~January 1, 2004,~~July 1, 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.10. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 1.11. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General

Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.12. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.13.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.13.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article ~~shall be known as the "Local~~ is the First One-Cent (1¢) Local Government Sales and Use Tax ~~Act."~~Act."

SECTION 1.14.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article ~~shall be known as the Supplemental~~ is the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.15.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article ~~shall be known as the Additional Supplemental~~ is the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001,~~May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code

without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

SECTION 3.7.(a) G.S. 105-188(d) reads as rewritten:

"(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable."

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of

a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

PART IX. CLOSE CORPORATE TAX LOOPHOLES

SECTION 9.1.(a) G.S. 105-130.4(a)(1) reads as rewritten:

"(1) "Business income" means ~~income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.~~ all income that is apportionable under the United States Constitution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) Sales factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Not withstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Tangible personal property. – Sales of tangible personal property are excluded from the denominator if they are sales to the United States government or sales that are in a state in which the taxpayer is not taxable. Sales of tangible personal property are in this State if the

property is received in this State by the ~~purchaser.~~purchaser and the purchaser is not the United States government. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales. – Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"**EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs**

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies. It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i) a~~A percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations. ~~under the limited liability company's governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

Senate Bill 1292 (PCS): Budget Revenue Act of 2002

Attachment 4

BILL ANALYSIS

Committee: House Finance
Date: July 23, 2002
Version: Draft

Introduced by: Senators Kerr and Hoyle
Summary by: Finance Team

SUMMARY: The proposed House Committee Substitute for Senate Bill 1292 contains the following tax changes:

- *PART I accelerates the 2001 legislation establishing a sales tax swap, as follows:*
  - *Accelerates the effective date of the local option sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the sunset of the State's half-cent sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.*
  - *Does not accelerate the hold harmless for local governments beginning in the 2003-2004 fiscal year and sunsets the hold harmless provision in 2012.*
  - *Accelerates the change from quarterly sales tax distributions to monthly sales tax distributions, from July 1, 2003, to October 1, 2002.*
- *PART II delays the income tax breaks enacted in 2001. This Part is identical to the Senate version.*
  - *The phase-in of the increase in the standard deduction for married taxpayers is delayed until January 1, 2003.*
  - *The phase-in of the additional child tax credit amount is delayed until January 1, 2003.*
- *PART III conforms North Carolina's tax laws to many of the federal tax law changes enacted in 2001 and 2002, and to the gift tax annual exclusion. Except for the gift tax change and a reduction in the bonus depreciation add-back, this Part is identical to the Senate version.*
  - *Conform to the educational provisions in EGTRRA.*
  - *Conform to the pension tax provisions in EGTRRA.*
  - *Conform to the net operating loss provisions in EGTRRA.*
  - *Conform to the miscellaneous provisions in EGTRRA and in the Job Creation and Worker Assistance Act of 2002.*
  - *Conform to the increased estate tax limits in EGTRRA.*
  - *The bill does NOT conform to either the phase-out of the State estate death tax credit in EGTRRA or the accelerated depreciation provisions in the Job Creation and Worker Assistance Act of 2002.*
- *PART IV provides that local governments will bear a portion of the costs associated with the collection of the drug tax. These costs are currently borne entirely by the General Fund. Except for a correction to the effective date, this Part is identical to the Senate version.*

- *PART V sets the insurance regulatory fee at 6.5% for the 2002 calendar year. This rate is the same as the 2001 rate. This Part is identical to the Senate version.*
- *PART VI sets the public utility regulatory fee at 0.1% for the 2002-2003 fiscal year. It also sets the electric membership corporation regulatory fee at $200,000 for the 2002-03 fiscal year. These rates are the same as the rates established last year. This Part is identical to the Senate version.*
- *PART VII is reserved.*
- *PART VIII seeks to secure local revenues in two ways, listed below. This Part is identical to House Bill 1490 as it passed the House. It is similar to the corresponding provision in the Senate version.*[1]
  - *It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.*
  - *It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized to withhold the funds by an act of the General Assembly.*
- *PART IX closes three corporate tax loopholes, as described below. There is no corresponding provision in the Senate version.*
  - *Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective beginning with the 2002 tax year.*
  - *Provides that sales that no state or country has the right to tax are "thrown out" of the calculation of profits to apportioned among the states, thereby increasing the percentage apportioned to North Carolina for the purpose of corporate income taxation, effective beginning with the 2002 tax year.*
  - *Tightens the 2001 legislation that was intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company, effective beginning with payments due in March 2003.*
- *PART X enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. There is no corresponding provision in the Senate version.*

[1] The Senate version lacks the conforming change to the electric cities statute, and lacks the extra requirement that the Governor needs General Assembly authorization before releasing any funds committed to local governments.

PART I: ACCELERATE SALES TAX SWAP

State and Local Sales Tax Changes.

Part I of this bill accelerates many of the provisions enacted last session and modifies others. The 2001 legislation authorized counties to levy additional local sales taxes of ½%, effective July 1, 2003. Under this bill, the tax may become effective as early as January 1, 2003. The 2001 legislation imposed an additional State ½% sales tax that was set to expire July 1, 2003. The bill would sunset this State tax January 1, 2003. Thus, the combined State and local rate would never exceed 6 ½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax in the first 6 months of 2003 with a shortened notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. If the county enacts the tax effective to become effective in the first half of the 2003 calendar year, the tax may become effective on the first day of any month from January through July and the county must give the Secretary only 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are reinstated.

Under current law, counties are authorized to levy up to 2% local sales and use taxes[2]. All counties levy the maximum rate. The State collects the tax and distributes it quarterly to the counties and municipalities. In 2001, the General Assembly provided that local sales taxes must be distributed monthly rather than quarterly, effective July 1, 2003. This bill accelerates the effective date of the monthly distribution schedule to October 1, 2002.

Local Government Reimbursements.

In 2001, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002.

The 2001 legislation would have provided local governments "hold harmless" payments beginning in 2003-2004 if the amount they could potentially realize from the levy of the

[2] Mecklenburg County is authorized to levy up to 2 ½% local sales and use taxes.

half-cent sales tax was less than the amount they would lose from the reimbursements. This bill does not accelerate the hold harmless provision, so it will not be in effect for the 2002-2003 fiscal year. Annual hold harmless payments will begin September 15 2003. This bill sunsets the hold harmless payments after the September 15, 2011 payment. The Department of Revenue will make the hold harmless distribution annually, drawing the funds from State sales tax collections.

State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

PART II: DELAY 2001 TAX BREAKS

Last session, the General Assembly enacted two income tax breaks to become effective for 2002 tax year[3]: elimination of the marriage tax penalty[4] and an increased tax credit for children. Part II of this bill delays the enactment of these tax benefits.

Last session, the General Assembly reduced North Carolina income taxes on married couples that claim the standard deduction[5] by increasing the amount of the standard deduction for married filers so that it would be twice that of a single taxpayer. Since 1989, the basic standard deduction for a single person in North Carolina has been $3,000 while that for a married couple filing jointly has been $5,000. The increase in the deduction enacted in 2001 is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so the 2001 act also phased it up from $2,500 to $3,000 over the 2002 and 2003 tax years. Part II of this bill would delay by one year the phase-in of the increased deduction, so that it would occur over the 2003 and 2004 tax years.

In 2001, the General Assembly increased the $60 tax credit per child to $75 for the 2002 tax year and to $100 for the 2003 tax year. Part II of this bill would delay the phase-in of the credit

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[3] S.L. 2001-424, as amended by S.L. 2001-476, 2001-497, and 2001-489.

[4] The so-called married tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry, a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[5] Roughly 70% of North Carolina taxpayers claim the standard deduction.

increase until the 2003 and 2004 tax years. The 1995 General Assembly enacted the tax credit of $60 per child for taxpayers who have dependent children and have family adjusted gross income below $100,000 for a married couple and $80,000 for a head of household. Neither the 2001 act nor this bill changes the income thresholds. The credit is in addition to the federal and state tax credits or exclusions for child care expenses. The credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

PART III: UPDATE IRC REFERENCE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[6] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[7] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

Congress enacted two bills that have changed the Code significantly since January 1, 2001:

- The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), enacted on June 7, 2001, includes numerous changes to the taxation of pension benefits, accounts, distributions, and rollovers; of education initiatives; and of estates. All of the provisions of EGTRRA will expire on December 31, 2010, unless the provisions are renewed or modified by Congressional action.[8]
- The federal Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004, and an extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002 from two years to five years.

Both of these acts will substantially affect a taxpayer's federal taxable income. Since North Carolina begins its corporate and individual income tax calculations with federal taxable

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[6] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[7] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

[8] The Congressional Budget Act of 1974 mandates this sunset provision.

income, these acts also have a substantial impact on North Carolina's tax revenues to the extent the State chooses to conform to those changes.

Part III of this bill rewrites the definition of the Code to change the reference date from January 1, 2001, to May 1, 2002. It then provides that a taxpayer must add to federal taxable income the amount allowed as an accelerated depreciation deduction under section 168(k) or 1400L of the Code and that a taxpayer's estate tax liability is determined without regard to the phase-out of the state death tax credit. In effect, Part III would do the following:

- Conform to all of the pension tax changes in the Code.
- Conform to all of the education initiatives in the Code.
- Conform to the increased estate tax exemption limitations.
- Not conform to the phase-out of the state death tax credit.
- Conform to the extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002.
- Delay the accelerated 30% bonus depreciation allowance.

Pension Tax Provisions: This Part conforms North Carolina's tax treatment of pension benefits and distributions to federal law. Some of the more notable changes EGTRRA made to the pension laws include:

- It allows taxpayers to contribute more to their tax-deferred retirement accounts. It gradually increases the amount that may be contributed to a 401(k), 403(b), and 457 accounts between 2002 and 2006. The contribution limit will increase to $15,000 in 2006. Starting in 2007, the limit will be indexed for inflation in $500 increments. It also allows persons who are 50 or older to make an additional catch-up contribution to their tax-deferred retirement accounts.
- It increases the amounts that may be contributed to both traditional IRAs and Roth IRAs from $2,000 in 2001 to $3,000 in 2002. This amount gradually increases to $5,000 for 2008. After 2008, this amount will be indexed annually for inflation. It also allows people over the age of 50 to make catch-up contributions to an IRA.
- It modifies the distribution rules for governmental 457 plan participants so that their deferred compensation funds will be taxed when they receive the distribution, not when it is made available to them.
- It repeals the coordination of deferrals between 457 and other elective deferral plans. Under former law, the maximum deferral amount for a 457 plan was reduced dollar for dollar by any contribution made to other types of retirement plans. The tax law change means that a person may defer the maximum annual contribution limit to a 457 plan as well as the maximum amount in a 401(k) or 403(b) plan.
- It expands the types of eligible tax-free rollover distributions to include distributions from qualified plans, 403(b) annuities, and 457 plans to other such plans and distributions from IRAs to qualified plans, 403(b) annuities, and 457 plans.
- It allows a surviving spouse to roll over distributions from a deceased spouse's plan to his or her own plan. Prior to this change, the tax-free rollover had to be made to an IRA.

Education Tax Provisions: This Part conforms North Carolina tax law on education incentives to the federal changes enacted last year. The more notable tax changes affecting education incentives include:

- It increases the annual maximum contribution limit to an education IRA from $500 to $2,000 per beneficiary.
- It allows education IRAs dollars to be used to cover expenses of students in grade, middle, and high schools.
- It eases the restrictions and limitations when using an Education IRA with other education initiatives, such as the Hope or Lifetime Learning tax credit.
- It moves the annual contribution deadline for Education IRAs from December 31 to April 15 of the following year.
- It provides that distributions from Section 529 Plans will be income-tax free up to the amount that is used to pay qualified higher education expenses.[9] Under former law, participants enjoyed only the benefit of tax-deferred contributions and investment growth.
- It allows a person to transfer 529 plan credits from one program to another for the benefit of the same beneficiary without incurring a taxable event.
- It extends the deduction for employer-paid college expenses to include graduate courses.

Estate Tax Provisions: North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced its inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government.[10] EGTRRA made two changes that affect the estate tax:

- It phases out the estate tax over the next eight years by increasing the exclusion amount from $675,000 in 2001 to $1 million in 2002-03, $1.5 million in 2004-05, $2 million in 2006-08, and $3.5 million in 2009. There is no need for an exemption amount after 2009 since the tax is repealed in 2010. However, the tax is scheduled to reapply in 2011 unless a future Congress makes the repeal permanent. If the tax were reinstated in 2011, the exclusion amount would be $1 million. **This bill would conform North Carolina's exemption limits to the federal exemption limits to ensure that estates in North Carolina do not have to pay State tax if there is no federal tax due.**
- It phases out the state death tax credit over the next four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and repealing it entirely in 2005. **This bill does NOT conform to the phase out of the state death tax credit for two years.**[11] Therefore, under

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[9] North Carolina currently allows tax free distributions for North Carolina plans. Section 3.5 of the bill repeals the State deduction.

[10] As of July 1, 2001, 36 other states, plus the District of Columbia, impose only the "pick-up tax".

[11] As of July 3, 2002 the following states have acted to decouple from the phase-out of the state death tax credit for some period of time or have introduced legislation to that effect: Connecticut, Illinois, Maine, Maryland, Minnesota, Nebraska, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The following states will remain decoupled unless they take legislative action: Arkansas, District of Columbia, Kansas, New York, Oklahoma, Oregon, Virginia and Washington. (Source: Center on Budget and Policy Priorities)

this bill an estate of a decedent dying on or after January 1, 2002, and before January 1, 2004, would owe North Carolina estate tax to the same extent that it would be owed without regard to the phase-out of the credit. The January 1, 2004, sunset ensures that the State will have to revisit this issue next year.

Because North Carolina's estate tax is based upon the federal credit for state death taxes, the repeal of the state death tax credit in 2005 and the ultimate repeal of the federal estate tax in 2010 will mean that the State must decide whether to replace or repeal its estate tax in the future.

Accelerated Depreciation Provisions: Under the Job Creation and Worker Assistance Act of 2002, a taxpayer is allowed an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 11, 2001, and before September 11, 2004. The taxpayer is still entitled to the normal first-year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation. This provision affects both corporate and individual income taxpayers.

The change in federal law results in a taxpayer recovering the basis in the asset sooner than under former law; however, over the life of the asset the taxpayer still receives the same benefit. This bill does not conform State law to the accelerated depreciation schedule allowed under federal law. [12] However, under this bill a taxpayer will continue to be able to deduct the same amount of an asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this decoupling from the federal accelerated bonus depreciation, the bill does two things:

- For the first three years of the federal accelerated depreciation, it provides that a taxpayer must add back to federal taxable income a percentage of the additional 30% accelerated depreciation in the year the accelerated depreciation is claimed for federal purposes.[13] The percentage is 100% for the 2001 and 2002 taxable years and 80% for the 2003 taxable year. There is no add-back for the 2004 taxable year. The add-back for the first three years of the accelerated depreciation means that for State tax purposes, a taxpayer would deduct less in tax years 2001-2003 than the taxpayer would have deducted if the State conformed to the accelerated depreciation law. The amount of the deduction will be the normal first year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation amount allowed under federal law plus 30% of the bonus

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[12] As of July 3, 2002, the following 22 states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin. In addition, New York City has decoupled from the bonus depreciation allowance. Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities; Tax Analysts)

[13] For tax years beginning before January 1, 2002, the add-back must be taken in the first taxable year beginning on or after January 1, 2002, so that the taxpayer will not recognize any retroactive tax increase.

deprecation in 2003. In 2004, the State will have in effect conformed to the federal law and the entire bonus depreciation may be deducted.

- In tax years beginning on or after January 1, 2005, it provides that the taxpayer may deduct from federal taxable income the total amount of the add-backs required in earlier years, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years - the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Gift Tax Change: North Carolina imposes a gift tax on property transferred during the life of a donor. Gifts to a spouse are exempt from tax. The gift tax law allows an annual exclusion of $10,000.

The federal gift tax annual exclusion is more complex. Since 1998, the $10,000 federal gift tax annual exclusion has been subject to an inflation adjustment. The adjustment happens only in increments of $1,000 however. From 1998 until 2001, inflation had not grown enough to reach the first $1,000 increment. In 2002, that threshold was reached and the federal annual exclusion increased to $11,000. This amount won't increase to $12,000 until the cumulative inflation adjustment is at least 20%.

Section 3.7 of the bill amends North Carolina's gift tax annual exclusion to piggyback the federal amount, effective January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV of this bill would allocate to local governments 70% of the State's expenses in collecting the unauthorized substance tax. The expenses would be drawn from local sales tax revenues. Under current law, the following expenses are deducted from local sales tax distributions: costs of the Property Tax Division, costs of the Property Tax Commission, the costs of the Institute of Government in operating a training program in property tax appraisal and assessment, and the costs of the Local Government Commission.

The General Assembly first imposed the unauthorized substances tax in 1989 to generate revenue for State and local law enforcement agencies and for the General Fund. Seventy-five percent of the tax collected is distributed to the State or local law enforcement agency that conducted the investigation that led to the tax assessment. The remaining 25% is credited to the General Fund. This bill does not change this revenue allocation.

PART V. INSURANCE REGULATORY CHARGE

Part V of this bill sets the insurance regulatory charge at the same rate as last year's rate: 6.5% for the 2002 calendar year. The insurance regulatory charge is a tax that was enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's premiums tax liability. The insurance regulatory charge is imposed on insurance companies, health maintenance organizations, and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations and health maintenance organizations do not pay premiums tax at that rate.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the tax rate for the public utility regulatory fee for the 2002-2003 tax year at the same rate as last year's rate: 0.1%. This rate must be set by the General Assembly each year. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of SL 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

Part VI also sets at $200,000 for the 2002-2003 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. This is the same rate that was in effect for the 2001-2002 fiscal year. The North Carolina Electric Membership Corporation is the only electric membership corporation that fits this description. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the

corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Corporation will be passed on to its member electric membership corporations.

PART VII: [RESERVED]

PART VIII: SECURE LOCAL REVENUES

Sections 8.1 through 8.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

- Section 8.1 - Beer and wine tax.
- Section 8.2 - Franchise gross receipts tax.
- Section 8.3 - Piped natural gas tax.
- Section 8.4 - Sales tax on telecommunications.
- Section 8.5 - Powell Bill funds.
- Section 8.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 8.7 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the

funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

PART IX: CLOSE CORPORATE TAX LOOPHOLES

This Part closes three corporate tax loopholes that allow some corporate profits to escape taxation and give corporate tax planners an opportunity to avoid existing taxes on corporate income and assets. The first loophole is caused by the definition of business income used in the corporate income tax law; the second loophole is caused by the treatment of certain sales in the formula for apportioning business income to the State for corporate income tax purposes; and the third loophole is caused by the different franchise tax treatment of corporations and limited liability companies.

Definition of Business Income: Section 9.1 of this Part amends the definition of "business income" to include all income that is apportionable under the U.S. Constitution, effective for taxable years beginning on or after January 1, 2002.

Corporations that do business in more than one state divide up their income among those states for income-tax purposes. Business income is apportioned based on a formula that takes into account how much sales, property, and payroll the corporation has in each state. Nonbusiness income is allocated to a state based on its connection with that state. In the most basic terms, nonbusiness income could be described as income that is earned in an unrelated sideline activity of the corporation.

As an analogy, each interstate corporation's income is in two "pies" – a business income pie that is divided up among the states in which it does business, and a nonbusiness income pie that is given entirely to the state it is connected to.

In an ideal system, all states would follow the same rules for dividing up interstate corporations' income for tax purposes, so that no more and no less than 100% of every corporation's net income would be subjected to state income tax. However, different states have different laws and even when the laws are the same, they may be interpreted differently. In theory, this can result in the taxation of more than 100%, as well as less than 100%, of a corporation's net income. In practice, corporate tax planners take the opportunity to create "nowhere" income – income that no state can tax. Instead of each state receiving its piece of the business income pie, some pieces are thrown away. Thus, although a corporation may do substantial business in North Carolina, much of its otherwise taxable business income may be characterized as nonbusiness, so that North Carolina gets no piece of it.

These tax avoidance schemes are possible not only because different states have different laws, but also because states such as North Carolina have laws that are vague or too narrow. In North Carolina, income is business income if it relates to the regular trade or business of the taxpayer. This definition is vague and narrower than what is allowed under the United States Constitution. If North Carolina is entitled to tax a significant percentage of a corporation's

business income, the corporation may try to shift much of its income into the nonbusiness pie, which North Carolina does not share in. This may be true even though the corporation has deducted as a business expense the same items that it now claims are not business items when the time comes to pay tax on profits. Recent court decisions in North Carolina have upheld this tax avoidance technique. Examples of the types of business income that corporations most often recharacterize are rents, royalties, gain or loss from the sale of property, interest, and dividends.

This proposal would change the definition of business income to include any income that the United States Constitution allows a state to treat as business income. This eliminates the current statute's vagueness and narrowness, which allow it to be used by corporations to create "nowhere" income that should otherwise be taxable in North Carolina. One effect of this change will be to include income from extraordinary events, such as a liquidation of a division, in apportionable income, consistent with the Department of Revenue's historical position, as illustrated by its administrative rules, before the North Carolina Supreme Court's decision in *Lenox v. Tolson.* A corporation's income earned out of state from unrelated business activity that makes up a discrete business enterprise would continue to be nonbusiness income that cannot be apportioned - it would continue to be allocated to the state to which it is connected.[14]

26 states including North Carolina use the vague, unnecessarily narrow definition of business income.

18 states have a broader definition of business income:

- 5 states have the law proposed in Section 9.1 of the bill (define business income as all that the U.S. Constitution allows state to apportion):
    1. Florida
    2. Iowa
    3. Minnesota
    4. Pennsylvania
    5. Texas
- 13 states apportion all corporate income. These states' approach would gain less revenue than the proposal in Section 9.1 because it would relinquish the right to tax true nonbusiness income of North Carolina-headquartered businesses. The 13 states include:
    1. Georgia
    2. South Carolina
    3. Virginia

In 1996, an economist with the Federal Reserve Bank of Boston published a study of the effect of state tax policy on economic development. The study looked at various manufacturing industries in 22 states - including most major manufacturing states - and found no statistically significant correlation between business tax burdens and the location of new investment.

[14] Several examples of the effect of this proposal are at the end of this summary.

Throw-out Rule for Corporate Apportionment: Section 9.2 of Part IX would exclude certain out-of-state sales of tangible personal property from the base of the sales factor used to apportion business income to North Carolina, effective beginning with the 2002 tax year.

Like the previous provision, this proposal would bring under North Carolina's corporate income tax a part of a corporation's "nowhere" income that is currently not being taxed by any state. Under current law, the formula for determining how much of the business income pie goes to North Carolina focuses on sales, payroll, and property in North Carolina. The sales factor is a ratio of sales in North Carolina to all sales everywhere. Sales of tangible personal property are considered to be "in" the state[15] where the purchaser receives the item. Under the sales factor formula, the more sales a corporation has that are not in North Carolina, the smaller the sales factor used to calculate North Carolina's piece of the business income pie - because the formula assumes those sales will go into another state's piece of the business income pie.

But some sales of tangible personal property don't go into any state's piece of the pie. That may be because they are made in a state that cannot tax the corporation or because they are made to the federal government and so one cannot tell which state they are made in. Without the throw-out rule (or a similar rule called the throw-back rule), 50% to 100% of the profits of a state's corporations may be "no where" income, according to a 2002 article published by Michael Mazerov of the Center on Budget and Policy Priorities.

Under Section 9.2 of the bill, "nowhere" sales (sales of tangible personal property where the purchaser is the federal government or is located in a state or country that cannot tax the corporation) are excluded from the sales factor formula so that they do not reduce the ratio that determines how much of a corporation's business income North Carolina can tax. Thus, if another state cannot consider the sales in calculating its piece of the pie, the sales will not escape tax entirely - instead, there will be an increase in North Carolina's piece of the pie. If every state adopted the throw-out rule, then 100% of a corporation's interstate income would be taxed - there would be no "nowhere" income.

Here is an example of the throw-out rule. Corporation X has 20% of its sales in North Carolina, 20% of its sales in Virginia, and 60% of its sales in Tennessee. The corporation has no nexus with Virginia so Virginia cannot tax its income. Tennessee, like North Carolina current law, has no throw-out or throwback rule. Under current law, the sales factor for North Carolina would be 20% divided by 100%, or 1/5. The sales factor for Tennessee would be 60% divided by 100%, or 3/5. There is no sales factor for Virginia. Thus, the sales factors for North Carolina and Tennessee add up to only 4/5 of the company's sales. As a result, less than 100% of the company's business income will be apportioned to those states for taxation. If North Carolina adopted the throw-out rule, the 20% of sales to Virginia are subtracted from the denominator of the sales factor. Thus, North Carolina's sales factor would be 20% divided by 80%, or 1/4. Because 1/4 is more than 1/5, a larger proportion of the corporation's income would be allocated to North Carolina. If Tennessee also adopted the throw-out rule, its sales factor would

[15] Under North Carolina's law for apportioning income, the term "state" includes other countries.

be 60% divided by 80%, or 3/4. Thus, the sales factors for the two states would add up to 100% and all of the corporation's sales would be considered in apportioning its business income between the two states.

The throw-out rule and its sibling, the throwback rule, are not new. They predate the 1959 federal law limiting a state's ability to impose corporate income tax on corporations whose only connection with the state is soliciting orders there. The following information on states that do and do not have the throw-out rule or the throwback rule comes from Michael Mazerov of the Center on Budget and Policy Priorities. After the name of each state is listed the percent increase or decrease of manufacturing jobs in that state during the period 1995-2000. For that period, NC's manufacturing jobs decreased 9.5%.

21 States, including North Carolina, do NOT have a throw-out or throwback rule. These states include:

State	Job Loss or Gain
• Florida	0.0%
• Georgia	+0.1%
• South Carolina	-8.0%
• Tennessee	-5.7%
• Virginia	-3.5%

The following 25 States HAVE the throw-out or throwback rule. [16] (The underlined states have the throw-out rule.)

State	Job Loss or Gain
• Alabama	-7.9%
• Alaska	-18.3%
• Arkansas	-3.1%
• California	+8.4%
• Colorado	+6.7%
• Hawaii	+1.2%
• Idaho	+8.2%
• Illinois	-1.8%
• Indiana	+0.6%
• Kansas	+9.8%
• Maine	-6.5%
• Mississippi	-9.3%
• Missouri	-4.1%
• Montana	+6.0%

[16] Washington, D.C. also has the throwback rule, bringing the total to 26. In addition, Massachusetts technically has the throwback rule but Mazerov points out that its rule is full of loopholes so that it is not effective.

- New Hampshire +3.0%
- New Jersey[17] -7.4%
- New Mexico -5.1%
- North Dakota +17.4%
- Oklahoma +6.7%
- Oregon +6.0%
- Texas +5.2%
- Utah +5.6%
- Vermont +8.4%
- West Virginia -2.1%
- Wisconsin +2.5%

According to Mazerov, this information shows that states with the throw-out and throwback rules (and the royalty loophole closing North Carolina enacted last year) are disproportionately represented among states with net manufacturing gains.

LLC Franchise Tax: In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole that allowed corporations to avoid franchise tax on their assets by transferring their assets to a controlled limited liability company (LLC). Corporations pay franchise tax on their assets but LLCs do not pay franchise tax on their assets. Tax planners helped many corporations avoid most of the franchise tax they would otherwise owe by setting up an LLC for the purpose of holding the assets on behalf of the corporation. Although the corporation's business continued in the same way, the corporation eliminated most of its franchise tax through this paper transaction.

The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[18] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

Section 9.3 of this Part broadens the approach of the 2001 legislation to include "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. This section would become effective beginning with payments due in March 2003. "Related members" is a term defined in the "trademark royalties" provision of last year's loophole bill and includes shareholders, partnerships, etc.

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[17] New Jersey just enacted the throwback rule in 2002.

[18] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

If a corporation and its related members together indirectly own at least 70% of an LLC's assets, this Part provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme. The language of the bill accomplishes this by stating that the following percentage of the LLC's assets are taxable to the corporation: "The attributable percentage is equal to the percentage of the limited liability company's assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations."

Here is an example:

A parent corporation, its subsidiary, and a major shareholder of the parent form a partnership to own an LLC that will own assets on behalf of the parent and subsidiary. The LLC's documents provide that upon dissolution its assets are distributed as follows:

- Parent Corporation: 20%
- Subsidiary Corporation: 45%
- Shareholder: 35%

Under current law, the assets would remain free of franchise tax. If this Part were enacted, the parent corporation would pay franchise tax on 31% of the assets and the subsidiary corporation would pay franchise tax on 69% of the assets. Those are their relative shares of the total once you exclude the non-corporate owner.

The approach taken by this Part is much broader than the 2001 legislation and is intended to anticipate the creative paper relationships tax planners may devise to try and avoid the franchise tax. The breadth of the provision is such that it could apply to a "legitimate" situation, such as an individual who is the sole shareholder of a corporation and who later forms an LLC with an associate. Under this proposal, the corporation would pay tax on the LLC's assets. Unfortunately, there does not appear to be a way to distinguish this type of situation from one in which the corporation is manipulating relationships to avoid its franchise tax. With different tax treatment of similar entities, tax planners can try to manipulate relationships to fall into the untaxed category. Because corporations and LLCs are similar, there may not be a strong policy reason to treat them differently for franchise tax purposes.

PART X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

Part X of this bill enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two counties and 25% for buildings located in

other tiers. In 2000, the General Assembly enacted legislation providing that the 75% credit is also allowed for buildings located in one of 26 counties that sustained severe or moderate damage from a hurricane in 1999. This increase in the amount of the credit was made effective for buildings that are allocated a federal credit on or after January 1, 2001. The federal tax credits are allocated in December of each year. Thus, those taxpayers who made investments in hurricane counties and were allocated federal credits in December 2000 are not eligible for the enhanced State credit. This act would backdate the effective date for eligibility for the enhanced State credit to from 2001 to 2000, thereby including those who were allocated federal credits for investments in hurricane counties during 2000.

EXAMPLES RELATING TO THE DEFINITION OF "BUSINESS INCOME" IN SECTION 9.1.

Investment in an unrelated corporation. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A buys stock in Corporation B. Corporation A and Corporation B are not involved in the same industry and the stock is held for investment purposes only. Corporation A does not actively participate in the management of Corporation B and does not integrate operations with Corporation B. Corporation A recognizes no economies of scale due to its ownership interest in Corporation B. Corporation A and B are not unitary. Corporation A sells the Corporation B stock and recognizes a capital gain. Under this bill, the capital gain is not apportionable to North Carolina. (See: Allied Signal, Inc. v. Director, Division of Taxation, 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992).) This income would also be nonapportionable, non-business income under current North Carolina law.

Reversion of excess pension funds. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A has made contributions to a defined-benefit employee pension plan for a number of years and has deducted these contributions from business income. The plan is found to be over-funded and a reversion of excess pension funds is allowed. The reverted funds are ordinary income for federal tax purposes. Under current North Carolina law, because the reversion is not a transaction that takes place in the regular course of business and because the right to a reversion is not an integral part of the corporation's regular course of business, the reverted funds are treated as non-business income and would not be subject to apportionment. (See: Union Carbide v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).) Under this bill, the reversion would be income subject to apportionment because it is income derived from a unitary business.

Liquidation of wholly-owned subsidiaries. Corporation X is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations A, B, and C are wholly owned subsidiaries of Corporation X. Corporations A, B, and C are domiciled in State 1 and have no business operations in North Carolina. Corporation X liquidates Corporations A, B, and C and immediately distributes the proceeds of the liquidations to Corporation X's shareholders. Corporation X recognizes a capital gain from the liquidations.

Liquidation of Corporation A - There is centralized management between Corporations X and A and their operations are functionally integrated. Corporations X and A therefore constitute a unitary business, part of which is conducted in North Carolina. Under this bill, the proceeds of the liquidation of Corporation A would be subject to apportionment.

Liquidation of Corporation B - Corporations X and B are engaged in the same general line of business. Corporation B supplies Corporation X with the majority of a product used in Corporation X's manufacturing operations. Corporation B therefore performs an operational function in Corporation X's business. Under this bill, the proceeds of the liquidation of Corporation B would be subject to apportionment.

Liquidation of Corporation C - There is no centralized management, functional integration, or economies of scale between Corporations X and C, and Corporation C performs no operational function in Corporation X's business. Corporation C is not part of Corporation X's unitary business. Under this bill, the proceeds of the liquidation would not be subject to apportionment.

(Note: This bill removes the confusion under current law created by the decision in Lenox v. Tolson regarding the apportionability of income from the liquidation of an operating division or subsidiary. In *Lenox v. Tolson*, the Court found that the liquidation of a separate line of business was not a transaction in Lenox's regular course of business and was not a disposition of property integral to Lenox's regular trade or business. The Court held that the proceeds were therefore nonbusiness income and not apportionable. The Court, however, failed to analyze whether the acquisition or management of the property constituted integral parts of the corporation's regular trade or business, an analysis required under the actual language of the statute, the Department's administrative rules, and the Court's prior decision in *Polaroid v. Offerman*. As the dissent in Lenox points out, the property of ArtCarved was an integral part of Lenox's regular trade or business and the proceeds from the liquidation of this property should therefore have been apportionable business income under previous opinions of the Court.)

Receipt of dividends from wholly-owned subsidiaries. Corporation A is a retailer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations B, C, and D are wholly owned subsidiaries of Corporation A. Corporations B, C, and D are engaged in retailing in foreign countries. Corporation A has no functional integration and no centralized management with Corporations B, C, and D. Corporation A realizes no economies of scale due to its ownership of Corporations B, C, and D. Corporations B, C, and D are therefore not part of a unitary business with Corporation A. Corporations B, C, and D perform no operational function in Corporation A's business. Corporation A receives dividends from Corporations B, C, and D. Therefore, under this bill, as well as under current North Carolina law, this income would not be apportionable. (See: F.W. Woolworth Co. v. Taxation and Revenue Dept. of NM, 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819 (1982).)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1292 PCS

SHORT TITLE: Budget Revenue Act of 2002

SPONSOR(S):

FISCAL IMPACT

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

($million)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues					
General Fund					
-Repeal Reimbursements	333.4				
-Repeal ½ Cent Sales Tax	(157.9)				
-Accl. Sales Tax Payments	(5.8)				
-Delay Child Tax Credit	19.8	34.9			
-Delay Standard Deduction	31.9	12.6			
-Drug Tax Receipt*	.9	.9	.9	.9	.9
-Conform Internal Rev. Code	(16.9)	(25.5)	(49.7)	(76.9)	(77.3)
-Estate Tax Credit	(5.5)	(7.3)	(17.7)	(5.9)	
-Conform Gift Tax Indexing	(0.2)	(0.2)	(0.2)	(0.4)	(0.4)
-Accelerated Depreciation**	38.2	8.6	(60.8)	0	0
-Conform Business Income	70.0	50.0	53.7	56.7	59.5
-Correct LLC Franchise Tax	20.0	21.2	22.5	23.8	25.2
-Corporate Throwout Rule	11.0	11.7	12.4	13.1	13.9
-Low Income Housing Credit	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)
TOTAL GENERAL FUND	**336.7**	**104.7**	**(41.1)**	**9.1**	**19.6**
Utilities Special Fund	11.9				
Insurance Reg. Fund	25.0				
Local Governments					
-Repeal Reimbursements	(333.4)				
-Accl. ½ Cent Sales Tax	157.9				
-Accl. Sales Tax Payments	5.8				
-Drug Tax Deduction	(.9)	(.9)	(.9)	(.9)	(.9)

*Department of Revenue will deduct 70% of costs of Unauthorized Substance Tax Division from sales tax proceeds.

**The impact of the changes is essentially revenue neutral over the long-term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of the asset. Thus, there will be substantial revenue losses starting in FY 2006-07.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Insurance, Utilities Commission, NC Housing Finance Agency, Local Governments.

EFFECTIVE DATE: Section 1.1 (Local Sales Tax) effective January 1, 2003. Section 1.3 (accelerated payments) effective October 1, 2002. Section 1.6 (State Sales Tax) effective January 1, 2003. Section 1.10 (Reimbursements) effective July 1, 2002. Section 2.1(a) (Married Standard Deduction $5,500) effective for taxable years beginning on or after January 1, 2003; Section 2.1(b) (Married Standard Deduction $6,000) effective for taxable years beginning on or

after January 1, 2004; Section 2.2(a) (Child Care Credit $75) effective for taxable years beginning on or after January 1, 2003; Section 2.2(b) (Child Credit $100) effective for taxable years beginning on or after January 1, 2004; Sections 3.2 and 3.3 (Accelerated Depreciation) effective for taxable years beginning on or after January 1, 2002; Section 3.4 (Estate Tax) effective on or after January 1, 2002 and applies to estates of decedents dying on or after that date and is repealed for estates of decedents dying on or after January 1, 2004; Section 4.1 (Unauthorized Substance Tax) is effective June 30, 2002; Section 6 (Utility Regulatory Fee) is effective July 1, 2002; Section 9.1(a) and Sections 9.2(a) are effective for tax years beginning on or after January 1, 2002; Sections 9.3(a) and (b) are effective for taxes due on or after January 1, 2003. All other sections are effective when they become law.

BILL SUMMARY:

Part I Section 1.1 of the bill authorizes local county commissioners to levy an additional ½ cent local sales tax, effective January 1, 2003. This tax would not apply to food. Section 1.2 makes conforming changes to the language to be used on the ballot, should county commissioners choose to place the local sales tax change before the public for a vote. Section 1.3 also makes conforming changes. Section 1.4 eliminates the hold harmless payments developed in the 2001 session in 2012. Section 1.5 changes the sales tax distribution to local governments from a quarterly payment to a monthly payment. Section 1.6 repeals the state's ½ cent sales tax, effective January 1, 2003. Section 1.7 makes changes to the distribution of use tax collections between the state and localities. Section 1.8 allows local governments to amend their budget ordinances to reduce the property tax levy if they receive additional and unanticipated revenues. Section 1.9 outlines the timeline that counties must follow when notifying the Department of Revenue of their intention to levy the additional ½ cent. Section 1.10 repeals the local government reimbursements. Section 1.11 allows the Department of Revenue to use up to $275,000 of local sales tax revenue to fund implementation of the new tax. Section 1.12 exempts Department of Revenue from standard contract and bid requirements, but only as it relates to items needed to administer the additional local option sales tax. Sections 13 – 15 make conforming language changes in the existing local sales tax statutes.

Part II of the bill delays two tax breaks authorized in 2001. Section 2.1(a) delays the increase from $5000 to $5500 in the standard deduction for married filing jointly from tax year 2002 to 2003. Section 2.1(b) delays the increase from $5500 to $6000 in the same deduction from tax year 2003 to 2004. Section 2.2(a) delays the increase in the child tax credit from $60 to $75 from tax year 2002 to 2003. Section 2.2(b) delays the increase in the child tax credit from $75 to $100 from tax year 2003 to 2004.

Part III of the bill updates state statutory references to the Internal Revenue Code from January 1, 2001, to May 1, 2002, with exceptions for accelerated depreciation and the estate tax credit. This action would conform state tax laws to federal tax changes made in the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Job Creation and Worker Assistance Act of 2002.

Under current law, North Carolina conforms to the federal estate tax in effect as of January 1, 2001. Thus, our pickup tax does not automatically tie into the 2001 federal changes. The estate tax language in this bill, coupled with the Internal Revenue Code conformity update provisions, would link North Carolina to the effect of the higher federal credits on the pickup tax but not to the phase-out of the death tax credit. The practical effect of the language in the bill is to ensure that with respect to the phased up federal credit for state death taxes, estates in North Carolina do not have to pay state tax if there is no federal tax due.

In the bonus depreciation conformity section of the bill, an add-back equal to 100% of bonus depreciation for the 2001-2003 tax years and 70% for 2004 is included in taxable income. The add-back is then offset by a subtraction from income starting with the 2005 tax year. This subtraction takes place in installments over a 5-year period.

This part of the bill also conforms the state gift tax exclusion to the indexing method used by the federal government.

Part IV allows the Department of Revenue to deduct 70% of the cost of the Unauthorized Substance Tax Division from the sales and use tax proceeds distributed to local governments.

Part V of the bill addresses the annual establishment of the insurance regulatory fee. Section 5(a) sets the insurance regulatory charge at 6.5%. The rate remains the same as in the previous year.

Part VI, Section 6(a) sets the regulatory fee rate for the Public Utilities Commission at 0.1%. This rate must be set annually and is the same as the previous year. Section 6(b) sets the regulatory fee for the electric membership corporations at a flat $200,000. This fee has remained the same since it was first imposed in 1999.

Part VII of the bill is reserved.

PART VIII attempts to limit the Governor's ability to withhold the local portion of revenues shared with cities and counties by declaring these funds local revenue. Specifically Section 8.1 addresses beer and wine taxes, while Section 8.2 discusses the franchise tax on electricity. Section 8.3 considers the tax on piped natural gas. Section 8.4 addresses the tax on telecommunications. Section 8.5 considers the Highway Fund and Highway Trust Funds allocated as Powell Bill funds. Section 8.6 addresses the distribution to electric cities. Section 8.7 adds intent language to clarify that the funds committed or appropriated by the legislature for local governments shall not be reduced unless the governor has exhausted all other sources of revenue for the state. It also states that the Governor must be authorized by the legislature to withhold these funds.

Part IX makes the following corporate tax changes:
BUSINESS INCOME. Sec. 9.1 of the bill expands the definition of "business income" to include all of the income that may be apportioned under the U.S. Constitution. The practical effect of the provision is to include in the North Carolina income tax base more income from irregular events, such as the sale of a subsidiary.

THROWOUT RULE. For most multistate corporations, nationwide taxable income is apportioned among the states based on a three-factor formula that compares payroll in a state, property in the state, and sales within the state to the national totals for each of the respective factors. Thus, the sales factor would divide sales within North Carolina (numerator) by total national sales (denominator). Section 9.2 of the bill modifies the sales factor by taking out sales to the U.S. government from both the numerator and denominator and subtracting from the denominator "sales that are in a state in which the taxpayer is not taxable" during the tax year. In addition, the denominator would not include sales that are in a foreign country when that country does not subject the taxpayer to a tax on, or measured by, profits or income.

LLC FRANCHISE TAX. Legislation adopted by the 2001 General Assembly attempted to close a loophole that allowed corporations to avoid the state franchise tax by transferring potentially taxable assets to a controlled limited liability company (LLC). This occurs because LLCs do not pay franchise tax on their assets. The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[1] at least 70% of the LLC's assets. However, if the corporation interposed a partnership between it and the LLC holding its assets, then the 2001 change would not apply and the assets would continue to escape taxation.

Sec. 9.3 of the bill broadens the 2001 legislation to include "related members" (other entities and individuals) who may form a partnership with one or more corporate entities to own the LLC to which the corporate assets are transferred. "Related members" includes shareholders, partnerships, etc. If a corporation and its related members together indirectly own at least 70% of an LLC's assets, the bill provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations.

Part X backdates the effective date from 2001 to 2000 for enhanced low income housing tax credits for projects located in counties damaged by Hurricane Floyd.

ASSUMPTIONS AND METHODOLOGY:

PART I: ACCELERATE SALES TAX SWAP

LOCAL OPTION SALES TAX

In 2001 the General Assembly approved a sales tax "swap". Under this proposal the state levies an additional ½ cent sales tax, bringing the state rate to 4.5%, and the total rate to 6.5%. This additional ½ cent sunsets on June 30, 2003. Starting July 1, 2003, county commissioners are authorized to levy an additional ½ cent at the county level, moving the local rate to 2.5% but holding the combined rate at 6.5%. Also effective July 1, 2003, the state will stop paying local governments approximately $333.4 million in reimbursements for previous tax law changes in the areas of property taxes on inventory and intangibles, the homestead exemption, and sales taxes on food purchased with food stamps.

This part of the bill allows county governments to levy an additional ½ cent of local sales tax 6 months earlier than under existing law.

Fiscal Research believes that in FY 2001-02, each penny of local sales tax generated $716.8 million in revenue. (This estimate does not include food). Using a growth rate of 1.2% suggests the following non-food, sales tax revenue stream for FY 2002-03:

[1] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

Fiscal Year	Revenue from 1 Cent	Revenue from 1/2 Cent
2002-03	$725.40	$362.70

Once adjustments are made for the January effective date, the total estimated statewide potential revenue available to local governments from this additional ½ cent is approximately $157.9 million. However, since the language is permissive and counties can decide to enact the tax at any time, no exact fiscal estimate is possible on this portion of the bill.

Section 1.9 allows local governments to begin levying the tax on the first day of any calendar month on or after January 1, 2003, and limits the amount of notice local governments must give the Department of Revenue for local sales tax changes effective between January 1, 2003, and July 1, 2003. No revenue side impact is expected as a result of this expedited process.

Sections 1.13-1.15 re-title and re-codify the existing local sales tax statutes. No fiscal impact is expected from these sections of the bill.

ACCELERATE REPEAL OF STATE ½ CENT SALES TAX

Section 1.6 of the bill repeals the most recently adopted ½ cent sales tax, effective January 1, 2003. This tax was scheduled to be repealed, under current law, July 1, 2003. This change accelerates the change by six (6) months.

As was noted previously, Fiscal Research estimates the following non-food, sales tax revenue stream for FY 2002-03:

Fiscal Year	Revenue from 1 Cent	Revenue from 1/2 Cent
2002-03	$725.40	$362.70

By moving the effective date up by six months the state looses $157.9 million in 2002-03. (This number is smaller than ½ the year's total because of collection lags).

REPEAL OF LOCAL GOVERNMENT REIMBURSEMENTS

Section 1.10 repeals the local government reimbursements. Since 1979, the General Assembly has made several changes to tax law that impact local governments. The state's cities and counties have received reimbursements from the state for some of these losses, particularly as they relate to the sales and property tax bases. The state reimburses local governments for property tax losses related to the repeal of taxes on inventories and intangibles, as well as some of the losses associated with the homestead exemption. Locals also receive a reimbursement for sales taxes that are no longer paid on items purchased with food stamps.

According to the Department of Revenue's Tax Research Division, annual reimbursements are as follows:

Reimbursement	Amount (Millions)
Food Stamps	$6.4
Intangibles	$128.7
Homestead	$8.2
Retail & Wholesale Inventory	$82.0
Manufacturers Inventory	$108.1
TOTAL	$333.4

No hold harmless provision is offered in 2002-03. Under current law hold harmless payments will be made starting in FY 2003-04. However, the bill (Section 1.4) also sunsets this payment, effective July 1, 2012.

MODIFY USE TAX PAYMENTS

Section 1.7 modifies the distribution of the local portion of use taxes collected on the individual income tax form. North Carolina consumers have been liable for use tax payments on all purchases on which sales tax are not collected since 1939. The use tax is imposed at the same rate as the sales tax and is designed to capture the revenue lost through sales by retailers that do not collect North Carolina sales tax. Unlike the retail sales tax that is collected by the merchant, the consumer pays the use tax directly to the state. From a practical standpoint, the use tax generally applied to traditional out of state purchases for consumption in North Carolina, or those sales made through a catalog or mail order company. The 1999 General Assembly approved HB 1433 to simplify use tax collection by providing that the use tax will be paid on the taxpayer's income tax return. That legislation also indicated that the state should forward one-third of the proceeds collected on this line to the state's counties and cities in proportion to their total local sales tax payments. At that time, the combined state rate was 6%, with 2% or one-third of that amount being local sales taxes. Since that time, the combined state rate has increased to 6.5%. As a result, one-third is no longer the appropriate proportion to forward to local governments.

The bill requires that the proportion of the tax paid to local units reflect what proportion of the general rate is actually local tax. Therefore, under the current rate structure, local units should receive 30.8% of the revenue (2.0% is 30.8% of a 6.5% tax). When the state's extra ½ cent is repealed in January 2003 the locals should begin receiving 38.5% of the revenue (2.5% is 38.5% of a 6.5% rate).

The fiscal impact of this change is expected to be less than $20,000.

ACCELERATE LOCAL SALES TAX PAYMENTS

Section 1.5 shifts the payment of sales tax revenues to local units from a monthly to a quarterly basis, effective October 1, 2002. During the 2001 session H.B. 232 transferred the sales tax payment from quarterly to monthly, but used a July 1, 2003 effective date. The bill expedites this change by nine

months. This change would substantially reduce the interest income ("float") the State receives on the use of the dollars between the time the tax is collected and the funds are distributed to local units.

The actual quarterly distribution now takes place about 45 days after the end of the calendar quarter. This analysis assumes that the monthly distribution would occur 45 days following the end of each month. The practical effect of the change on State General Fund nontax revenue (investment income) is that for taxes collected the first month of the quarter, two months of interest income would be eliminated. For the second month, the State would no longer receive one month of interest earnings. For the final month of each quarter, the timing change will have no effect since the distribution would take place 45 days after the end of that month under either system.

The interest rate assumption for this calculation is 5.5%, which is the most recent yield estimate offered by the Treasurer's Office. This estimate also assumes that all 100 counties increase the local tax in January 2003. As such, this estimate may overstate actual revenue losses. The estimated "float" amount discussed above is shown as a loss to the state and a gain for local governments.

PART II: DELAY 2001 TAX BREAKS

STANDARD DEDUCTION – MARRIAGE TAX PENALTY

The term "marriage penalty" refers to the income tax situation where married individuals filing jointly pay more in tax than if the two individuals were unmarried filing as single persons. For example, the North Carolina standard deduction for single filers is $3,000, but for married filing jointly the standard deduction is $5,000. The personal exemption also favors single filers. For single filers, the personal exemption is $2,500 until you get to a maximum Adjusted Gross Income (AGI) of $60,000 where it drops to $2,000. For married filing jointly, the personal exemption is $2,500 up to $100,000 AGI, then drops to $2,000. State tax brackets also favor single filers as shown below:

Single	0 to $12,750	$12,751 to $60,000	$60,000>
Married filing jointly	0 to $21,250	$21,251 to $100,000	$100,000>

The 2001 General Assembly reduced the marriage penalty by increasing the standard deduction for married filing jointly taxpayers from $5,000 to $6,000. The standard deduction was increased to $5,500 in tax year 2002 and then to $6,000 in tax year 2003. The FY 2001-02 reduction in General Fund revenue was projected to be $9.7 million due to estimated payments and withholding by 762,340 couples in the first half of tax year 2002. The estimated loss for the following fiscal years is shown below.

FY 2001-02	-$9.7 mil.
FY 2002-03	-$32.0 mil.
FY 2003-04	-$45.0 mil.
FY 2004-05	-$45.8 mil.
FY 2005-06	-$46.5 mil.

Section 2.1(a) delays the first $500 increase in the standard deduction to tax year 2003 and Section 2.1(b) delays the additional $500 standard deduction increase to 2004. Since the original fiscal

estimate assumed income tax withholding in tax year 2002 (second half of FY 01-02 and first half of FY 02-03), a delay in the standard deduction increase will result in a General Fund revenue gain from increased tax liability on 2002 tax returns. However, not all of the $41.7 million shown in the first two years of the chart will be regained by the General Fund next fiscal year. The 2003 effective date for the standard deduction increase means married filing jointly taxpayers can change their income tax withholding in the first half of 2003 and reduce their tax payments by $9.8 million. The net gain from this delay from 2002 to 2003 is $31.9 million ($41.7 million minus $9.8 million). For the $6000 standard deduction delayed until 2004, the estimated revenue loss is $32.4 million in FY 2003-04. Since the original estimate for FY 2003-04 was $45 million, the General Fund will gain $12.6 million that year.

Note: All revenue estimates for the standard deductions were calculated using the North Carolina Individual Income Tax Model. This tax model was created by the Barents Group for the Department of Revenue and the General Assembly for use in estimating tax law changes. The model bases future year estimates on data from 1998 North Carolina individual income tax returns.

INCREASE TAX CREDIT FOR CHILDREN

The current $60 child tax credit was approved by the 1995 General Assembly. The 2001 General Assembly increased the child credit from $60 to $75 per child in tax year 2002 and from $75 to $100 in tax year 2003. The first increase will reduce General Fund revenue $19.8 million in FY 2002-03 for taxpayers filing returns in the spring of 2003. The second year increase will boost the revenue loss to $54.8 million in FY 2003-04. This tax change will benefit 18,354 single tax filers, 496,286 married couples, and 411,648 heads of households in tax year 2002. This revenue estimate was calculated using the North Carolina Individual Income Tax Model.

Section 2.2(a) delays the first $15 increase in the tax credit from 2002 to 2003 and Section 2.2(b) delays the second $25 increase from 2003 to 2004. The delay will eliminate the $19.8 million General Fund loss for FY 2002-03 and result in a General Fund revenue gain of an equal amount. There is a revenue gain of $34.9 million in FY 2003-04 because the $75 credit in 2003 has a $19.9 million revenue loss versus the $54.8 million loss for the now scheduled $100 credit.

PART III: UPDATE IRC REFERENCE

CONFORMITY

Section 3.1 changes the state tax law reference to the Internal Revenue Code from January 1, 2001, to May 1, 2002. Since North Carolina individual and corporate income tax law tracks the federal income tax law, it is necessary each year to update state statutory references to the Internal Revenue Code (IRC). Congress enacted two major bills in calendar years 2001 and 2002 that have a negative revenue impact on the state General Fund.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) included numerous provisions that impact North Carolina individual and corporate income tax. This bill conforms the state to the education provisions in the bill that affect education IRAs, Qualified Tuition Plans, deduction for higher education expenses, interest from student loans, and employer provided assistance. The bill conforms to the pension provisions in the act that affect IRA contribution limits, deferred comp plan deferral limits, and plan portability. The bill accepts changes in the

phase out of itemized deductions and personal exemptions beginning in 2006. However, the bill does not conform to the estate tax changes in the act.

The state will conform to the Job Creation and Worker Assistance Act of 2002 except for the accelerated depreciation rules. Included in the bill were changes to net operating losses, the extension of expiring tax provisions, and a new above the line $250 deduction for teachers' classroom expenses.

The estimate of the state's revenue gain or loss from the federal changes is based on the fiscal analysis of the Congressional Joint Committee on Taxation. The federal analysis includes the effects of certain behavioral responses to tax proposals, including shifts between nontaxable and taxable sources of income, changes in amounts of charitable giving, and changes in the timing of realization of some sources of income. To derive an estimate for North Carolina for individual income tax changes, the federal income tax receipts for the U.S. were compared to the North Carolina General Fund income tax receipts for the July 2000 to July 1 2001 period (with adjustments for earmarks and refunds). The resulting percentage was .735%. For corporate income tax, a .59% rate was derived using the 1997 US Economic Census on Manufacturing.

The state revenue impact from conforming to the two federal bills is as follows:

Conformity		**($million)**			
Category	**02-03**	**03-04**	**04-05**	**05-06**	**06-07**
Economic Growth and Tax Relief Reconciliation Act of 2001					
Education	-14.6	-20.5	-25.3	-27.8	-15.8
Pensions, IRA's	-6.1	-14.3	-18.5	-24.7	-29.4
Other					-12.8
Job Creation and Worker Assistance Act of 2002					
Net operating losses	-4.7	-3.9	2.5	1.7	1.1
Other	8.5	13.2	-8.4	-26.1	-20.3
	-16.9	**-25.5**	**-49.7**	**-76.9**	**-77.3**

The bill also conforms the North Carolina gift tax exclusion to the federal inflation-adjusted gift tax exclusion used by the federal government. This indexing process was introduced as a part of the 1997 federal tax revision. Under current North Carolina law the annual gift tax exclusion is $10,000. Tax rates of 1% to 17% are applied to the portion of a gift beyond that amount, depending upon the amount of the gift and the relationship between the donee and donor (Rates of 1% to 8% apply to the smaller gift amounts). These tax rates will not change as a result of the bill. However, the amount excluded from taxation will change as the amount of the federal exclusion changes. This year the federal inflation adjusted exclusion amount was increased to $11,000. The next exclusion amount change is not expected for at least three years, as that exclusion is only adjusted by increments of $1,000 whenever a threshold is crossed. As such, Fiscal Research assumes that the bill effectively increases the exclusion to $11,000 for three fiscal years, and then moves the exclusion to $12,000 in the following two fiscal years.

In FY 2001-02 the Department of Revenue, Personal Taxes Division received 6,500 gift tax returns. However, the report that the year was rather extraordinary, as they generally receive approximately

6,000 returns a year. Recently the Tax Research Division pulled a sample of 114 returns from the 2001-02 fiscal year. These returns indicate the following revenues from the $1,000 gap between $10,000 and $11,000 in gifts:

Relationship to Donor	Tax Rate	Revenue
Lineal Ancestor	1%	53,596
Other Family	4%	4,664
Other	8%	127,712
Total		185,972

Given the volatility in gift tax returns, Tax Research believes an estimate of approximately $180,000 to $200,000 for the $1,000 threshold change is reasonable. This suggests that conforming to the indexing of the gift tax will cost the state approximately $180,000 to $200,000 in the first three years and $360,000 to $400,000 in the next two fiscal years. The larger of these amounts are used as the estimate.

ACCELERATED DEPRECIATION

The first step in the analysis of Sections 3.2 and 3.3 was a simulation of the impact of the 30% bonus depreciation and the add-back on individual projects. A project size of $10 million was selected, although the analysis is the same regardless of the magnitude of the investment. Bonus depreciation is eligible for projects with a class life of up to 20 years. Thus, the following classes of asset lives would be impacted.

Class (Years)	Class Life Range (Years)
3	Less than 4
5	4-9
7	10-15
10	16-19
15	20-24
20	25 or more

The analysis assumed the use of the modified accelerated cost recovery system (MACRS). This system includes depreciation schedules based on double-declining balance depreciation rates for 3, 5, and 7-year property. For other classes, straight-line depreciation must be used. In addition, the analysis used the "mid-year convention" for the assumed investments.

The simulation looked at investments for all class lives eligible for bonus depreciation. Each calculation compared the current law depreciation with that under the 30% bonus. Under the 30% bonus schedule, the "regular depreciation" declines since it is calculated against the depreciation base after the application of bonus depreciation. Thus, the decline in normal depreciation offsets the first-year increase in total depreciation due to the bonus amount so that over the life of the asset there is no net change in the depreciation taken.

In addition, the impact of the 100% and 70% addbacks, and the "giveback" of the addback beginning in 2005, is calculated. The first-year net impact of bonus depreciation varies by asset class, with the largest short-term tax savings going to the assets with the longest lives. **The net impact of both the bonus depreciation and add-back are essentially zeroed out over the long term.**

To determine the impact on state revenues, a mathematical relationship was established between the net impact of "bonus depreciation with add-back" and "bonus depreciation only". This ratio was then compared to the "bonus depreciation only" fiscal impact of numerous states as reported in the National Conference of State Legislatures (NCSL) survey. These estimates were then adjusted to North Carolina based on corporate tax receipts in each state. In addition, the recent report of the Center for Budget and Policy Priorities (CBPP) contained estimates for particular states. The estimate used in this analysis relies heavily on the CBPP report.

In addition to the steps listed above, Fiscal Research also reviewed the fiscal impact statements in the three states that have adopted add-backs. The states are Nebraska (85% add back), Ohio (83.33%), and Minnesota (80%). This review, coupled with phone conversations with tax analysts in all three states, indicated that the add-backs used make the bonus depreciation approximately revenue-neutral for FY 2002-03. For future years, the net impact depends on the "add-back subtraction" schedule adopted.

The discussions with other states confirmed the difficulty of developing a precise fiscal estimate. The biggest problem is that after simulating the case-by-case impact of the proposal on investments with different class lives, there is no way to know how to weight the different simulations. The reason is that capital investment data compiled by the U.S. Department of Commerce does not provide a breakdown by asset life.

A particular problem encountered was the 2001 tax year. The federal change was effective for investments after September 10 of the year. Under current Department of Revenue instructions, calendar year taxpayers were able to use bonus depreciation for the 2001 tax year if they were able to modify their return in the few days between the federal enactment and the March 15 filing date. Other affected taxpayers will be eligible for a refund, but only after action by the General Assembly. These different possibilities make it difficult to determine how much of the 2001 tax year impact occurred in FY 2001-02 versus FY 2002-03.

The cash-flow estimates are conservative in terms of the weighting of asset classes in the calculations.

ESTATE PICK UP TAX

The regular inheritance tax was repealed in North Carolina by the 1998 General Assembly, effective for deaths occurring on or after January 1, 1999. Following the tradition of the other 36 states that have repealed their primary death tax, a "pickup" tax continues to be levied in North Carolina to use up the credit allowed on the federal estate tax return for state death taxes. In the absence of such a levy, the federal tax liability of the estate would be increased and potential state dollars would flow to the U.S. treasury.

In 2001 the congressional tax package made two changes that will have an effect on a small number of large estates as well as pickup tax collections in many states. First, the federal tax was

phased out over a number of years until it is completely eliminated in 2010. This was accomplished primarily through higher federal credits. In the first few years, the higher credits reflect an acceleration of the credit phase-up under the 1997 federal tax relief bill. In addition, the 2001 bill phases out the state death tax credit over four years, beginning with deaths occurring on or after January 1, 2002.

The starting point for the analysis of Section 3.4 was the pickup tax revenue estimates included in the official revenue forecast used in amending the FY 2002-03 General Fund budget. The FY 2002-03 forecast of $117.3 million of pickup taxes was grown by 4% per year to determine receipts for future years (until the tax is effectively eliminated due to the repeal of the federal credit for state death taxes). Fiscal Research then reviewed the projected cost for each year of full conformity to the 2001 federal changes contained in the Center For Budget and Policy Priorities (CBPP) report. In addition, we looked at state by state estimates contained in the NSCL survey and adjusted these numbers to North Carolina by using state-specific federal estate tax return data for 1993-99 (reported gross estate numbers). The estimates finally adopted for purposes of this fiscal note were slightly higher than the CBPP numbers and near the top of the range of the estimates of other states.

This "full conformity" estimate was then modified to determine the "higher federal credits" conformity ("partial conformity") cost by comparing the CBPP estimates for full conformity and partial conformity for the 2002-03 fiscal year (18%). This led to an annualized FY 2002-03 projection of $7.3 million. For future years, the partial conformity estimate was based on the relationship of the CBPP projection of partial conformity for North Carolina to full conformity.

PART IV: UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV will reduce the General Fund share of the administrative costs of the Unauthorized Substance Tax Division of the Department of Revenue, which administers the excise tax on unauthorized substances. Seventy-five percent (75%) of the tax proceeds are distributed to the law enforcement agencies that conducted the investigations that led to the assessments, and twenty-five percent (25%) of the tax proceeds are credited to the General Fund. In some years, the amount credited to the General Fund has not covered the costs of the Unauthorized Substance Tax Division.

Local law enforcement agencies receive most of the proceeds from the 75% that is distributed to law enforcement agencies. Therefore, the proposal is that local entities bear their proportionate share of the costs of the Unauthorized Substance Tax Division. To accomplish this, seventy percent (70%) of the costs would be taken from local sales and use tax revenue, as this percentage of the Division's cost is considered to be for the benefit of the local entities. This change in cost assignment requires an amendment to G.S. 105-501. This proposal does not change the amounts that are distributed to local law enforcement agencies. It simply recognizes that the Unauthorized Substance Tax Division primarily benefits local entities and that local entities should therefore bear their share of the expense.

The amount of the costs to be taken from the local sales and use tax is 70% of the costs of the Division rather than 75% because a small part of the amount that is distributed to law enforcement agencies is distributed to State law enforcement agencies. By the Department's records, the amount distributed to State law enforcement agencies is less than 5%. Using 70% instead of 75%

therefore ensures that the costs borne by local entities are proportionate to the benefits they receive.

The General Fund will be reimbursed from local Sales and Use Tax funds transferred to a non-tax GF revenue account for 70% or $886,893 of the division's operating budget. Essentially, relieves the GF of a portion of the division's operating expense.

PART V: INSURANCE REGULATORY CHARGE

Part V of the bill sets the insurance regulatory charge at 6.5%. This is the same amount set in the previous year. This fee is assessed against the 1.9% premiums tax paid by insurers or against the presumed premiums tax that would be paid by HMOs and Article 65 companies (Blue Cross/Blue Shield) if taxed at 1.9%. The revenue is used to reimburse the General Fund for appropriations to the Department to pay expenses incurred in regulating the industry and other industries and to other departments as specified in G.S. 58-6-25(d).

The premiums tax collections for FY 2002-2003 are estimated to be $315.79 million. The HMOs and the Article 65 companies must pay a regulatory charge based on their presumed premiums tax at 1.9% (they pay .833% in 2002 and 1% in 2003). The presumed premium tax for the HMOs and Article 65 companies is estimated to be $68.83 million.

With the premiums tax collections of $315.79 million and the presumed premiums tax of $68.83 million from the HMOs and Article 65 companies, the total base against which the insurance regulatory charge will be assessed is estimated to be $384.62 million. Applying the 6.5% regulatory fee to the $384.62 million base would generate $25 million in regulatory fee revenue.

The certified budget for the Department, based on actions taken during the 2001 Session, is $23.5 million. In addition to reimbursing the General Fund for appropriations to the Department, the Insurance Regulatory Fund will also reimburse the General Fund for the $486,000 appropriated to support the Managed Care Patient Assistance Program (MCPAP), established by S.L. 2001-446. The total reimbursement to the General Fund is estimated to be $24 million. The Department estimates that the reserve will have a balance of $11.98 million at the beginning of FY 2002-2003. The total available from the reserve fund of $11.98 million and the estimated collections of $25 million will be $36.98 million. The total available less the estimated General Fund reimbursement of $24 million will leave a year-end reserve balance of $12.98 million. This reserve is above one-third of the estimated General Fund reimbursement.

The above calculation is based on the certified budget for FY 2002-2003 and does not include any adjustments to the FY 2002-2003 Budget that are or will be under consideration during the 2002 Session. Based on the above, the regulatory surcharge rate of 6.5% is sufficient to defray the estimated cost of the operations of the Department and provide for a reserve fund. The Department recommends that the rate remain the same and would not recommend a decrease in the rate because of the unknowns in the economy.

PART VI: REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the fees for regulation by the North Carolina Utilities Commission ("Commission"). Section 6(a) of the bill sets the rate at 0.1%, the same as the current rate.

Revenue from this fee, which is assessed against regulated public utilities, is used to support the operations of both the Commission and the Public Staff. Based on estimated FY 2002-03 jurisdictional revenues of $10,854,768,332, the regulatory fee will produce $11,700,238. For the same period, the Commission estimates that the combined operations of the Commission and Public Staff will require total expenditures of not less than $11,695,970. The net change in the Commission's Accumulated Fee Margin Reserve Account is therefore approximately $4,268. The estimated balance in this account as of June 30, 2003, is $4,941,393. This represents approximately five months of operating reserve.

Section 6(b) of the bill sets the public utility regulatory fee to be paid by the North Carolina Electric Membership Corporation for the 2002-03 fiscal year at $200,000. In 1999 the initial fee of $200,000 was developed as a result of discussions between the industry and the Utilities Commission, based on what the Utilities Commission believed to be the cost associated with regulating the electric membership cooperatives. In 2001 the Utilities Commission provided information to Fiscal Research illustrating that these fees will support approximately 4000 hours of accounting, engineering, and legal time. This fee amount must be set by the General Assembly each year.

PART VIII: SECURE LOCAL REVENUES

In the spring of 2001, as a result of substantial budget shortfall, the governor escrowed $95.0 million of reimbursement payments to local governments. This payment is made as a reimbursement for revenues lost by the state's repeal of the property tax on various inventories. The funds were placed in an escrow account in case they were needed to balance the state budget on June 30, 2001. These funds were later released to the local units. In 2002, again facing a difficult fiscal situation, Governor Easley escrowed the spring inventory tax reimbursement to local governments. This $95.0 million was again placed in a special account to hold in case it was needed to balance the state budget in 2002. At the same time the governor announced he was holding an additional $114.0 million in reimbursements and shared revenues to secure his ability to balance the state budget. The $114 million included the following estimated amounts:

Fund Type	*Amount Withheld*
Franchise Utility Tax	
March Distribution	35.6
June Distribution	25.0
Piped Natural Gas	
March Distribution	6.9
June Distribution	11.8
Beer and Wine Tax	26.8
Homestead Exemption	7.9
TOTAL	**114.0**

Sections 8.1 – 8.7 are an attempt to secure these revenues from future gubernatorial action. This legislation has no direct impact on the budgets passed by the General Assembly, as these shared revenues have not been used in the legislative process for state expenditures. However, the

legislation could limit the options available to the Governor. Because of the lack of clarity about what actions will be required of the Governor in future years, and the impact this particular legislation will have on the individual's decisions, no fiscal estimate is possible on the impact of the legislation.

Part IX: CLOSE CORPORATE TAX LOOPHOLES

BUSINESS INCOME

The Tax Research Division of the Department of Revenue analyzed 1999 corporate income tax returns and found that the maximum amount of additional tax revenue from the proposal would be $293.4 million. For 2000, the maximum would be $442.5 million. The higher number for 2000 is due to an increase in the amount of nonbusiness income from all sources shown on 2000 returns and a higher weighted average apportionment factor.

The extent to which total reported nonbusiness income can be brought into the tax base depends on how much of this income is not reported to other states and whether there are certain types of nonbusiness income that could not be taxed under the federal standards in the bill. The Department of Revenue does not have a good feel for the magnitude of these factors. In addition, the impact of the 2001 recession has reduced the corporate tax base in North Carolina by 33% and economists are still cautious about the outlook for 2002 national corporate profits.

We have not found any situations in which states have recently adopted this legislation and thus had fiscal notes available. Many states have had such laws on the books for many years and a 1992 U.S. Supreme Court decision opened the door for states to pursue enforcement. New Jersey adopted the proposal this year but the quality of the fiscal information was lacking, partly due to the difficulty of making the estimate.

Based on discussions with the Department of Revenue and concern about the uncertainty surrounding the estimates, we have taken a very cautious approach to this estimate.

THROWOUT RULE

There is very little data from other states on this issue. The New Jersey corporation business tax reform package included the item but there was no statement of the methodology behind the fiscal estimate. We are concerned with the lack of quality data on the issue and feel that a conservative estimate equal to roughly 50% of the earlier proposed throwback rule would be workable. In our analysis, we consulted with the corporate staff of the Department of Revenue.

LLC FRANCHISE TAX

There is little available information on this matter. The fiscal estimate used for the 2001 proposal to address the issue was $10.8 million. Discussions with the Department of Revenue about the impact on some taxpayers indicated that the proposal would not only close some of the loophole not addressed last year but would also pick up some of the erosion in the corporate income tax due to the tax planning strategies that have taken place since the 2001 change or might occur in the future. Thus, the proposed change is broader than last year's action.

Part X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

The North Carolina Housing Finance Agency identified 8 projects authorized for a 25% state tax credit in 2000 that would qualify for the 75% state tax credit for those in counties damaged by Hurricane Floyd. These projects have been completed or are nearing completion thus the investors in the projects can begin taking the tax credit in FY 2002-03. Assuming the project investors use 100% of the available tax credit, the additional tax credits granted by this part is $10,727,800. Since the state tax credit is taken over five years, the General Fund revenue loss is spread over five fiscal years. The annual General Fund loss due to Part X of the bill is $2.15 million for Fiscal Years 2002-03 to 2006-07.

Projects	County	Federal Tax Credit	State Tax Credit @ 25%	State Tax Credit @ 75%	Additional Credit	2000 Tiers
#1	Craven	$2,648,010	$662,003	$1,986,008	$1,324,005	4
#2	Lenoir	$3,257,450	$814,363	$2,443,088	$1,628,725	3
#3	Lenoir	$2,530,000	$632,500	$1,897,500	$1,265,000	3
#4	Nash	$2,602,800	$650,700	$1,952,100	$1,301,400	4
#5	Pitt	$2,520,980	$630,245	$1,890,735	$1,260,490	4
#6	Pitt	$2,647,460	$661,865	$1,985,595	$1,323,730	4
#7	Wayne	$2,584,270	$646,068	$1,938,203	$1,292,135	3
#8	Wilson	$2,664,630	$666,158	$1,998,473	$1,332,315	3
			$5,363,900	$16,091,700	$10,727,800	

SOURCES OF DATA: Part II: Individual Income Tax Model. Part III: (1) The May, 2002 state-by-state survey of the National Conference of State Legislatures (**Recent Federal Tax Legislation and the States**); (2) A January, 2002 analysis of the Center On Budget and Policy Priorities on state options to conform to the 2001 federal estate tax changes; (3) Bonus depreciation fiscal estimate material from Ohio, Minnesota, and Nebraska; (4) Congressional Joint Committee on Taxation. Part VIII: Office of State Budget and Management. Part X: NC Housing Finance Agency

TECHNICAL CONSIDERATIONS: The January 1, 2002, effective date of the federal changes in Part III means that only three quarters of the 2002-03 fiscal year will be affected by the change since estates have up to nine months after death to file a return. In addition, the January 1, 2005, repeal of the state death tax credit on federal estate tax returns means that one quarter of FY 2005-06 revenues will be affected.

In Part IX of the bill, the 2002-03 estimate for the nonbusiness income change assumes that during the fiscal year the State would receive 100% of the 2002 tax year impact and about 40% of the 2003 tax year. For the other corporate changes, we did not assume that April and June, 2003 estimated tax payments would be adjusted up because the magnitude of the calendar year change is relatively small.

PREPARED BY: David Crotts, Linda Millsaps, Richard Bostic

APPROVED BY:

DATE: July 23, 2002

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Attachment 6

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Alamance	**4,116,412**	1,583,388	(2,533,024)
Alamance	3,445	3,906	461
Burlington	1,383,263	554,483	(828,780)
Elon College	107,922	81,657	(26,265)
Gibsonville		27,228	27,228
Graham	264,301	156,830	(107,471)
Green Level	8,531	23,590	15,058
Haw River	170,049	28,798	(141,251)
Mebane	233,027	94,116	(138,911)
Swepsonville	237	9,982	9,745
Alexander	**879,473**	436,190	(443,283)
Taylorsville	58,771	32,651	(26,120)
Alleghany	**271,292**	142,697	(128,595)
Sparta	18,976	28,465	9,489
Anson	**870,049**	286,598	(583,451)
Ansonville	4,030	7,272	3,242
Lilesville	4,271	5,156	885
McFarlan	598	1,082	484
Morven	4,269	6,599	2,330
Peachland	3,240	6,298	3,058
Polkton	10,333	21,347	11,014
Wadesboro	168,913	43,752	(125,161)
Ashe	**538,628**	334,088	(204,540)
Jefferson	26,280	20,032	(6,248)
Lansing	1,738	2,440	701
West Jefferson	67,461	15,738	(51,723)
Avery	**311,593**	288,024	(23,569)
Banner Elk	9,629	17,609	7,980
Beech Mountain		180	180
Crossnore	1,286	4,835	3,549
Elk Park	2,967	8,714	5,747
Grandfather Village	36	668	632
Newland	14,121	12,900	(1,221)
Seven Devils		433	433
Sugar Mountain	19,802	2,400	(17,402)
Beaufort	**1,407,581**	639,696	(767,885)
Aurora	6,655	9,807	3,152
Bath	2,711	2,680	(31)
Belhaven	24,730	33,160	8,430
Chocowinity	18,577	11,560	(7,017)
Pantego	1,659	2,506	847
Washington	235,971	146,444	(89,526)
Washington Park	4,195	7,127	2,932
Bertie	**475,321**	197,809	(277,512)

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Askewville	1,188	2,005	817
Aulander	20,800	11,831	(8,970)
Colerain	3,630	2,224	(1,405)
Kelford	1,827	1,875	48
Lewiston Woodville	11,922	8,140	(3,783)
Powellsville	2,075	2,604	529
Roxobel	2,120	2,334	215
Windsor	15,246	22,684	7,438
Bladen	**835,674**	398,267	(437,407)
Bladenboro	33,091	11,951	(21,140)
Clarkton	16,759	6,477	(10,282)
Dublin	7,090	1,687	(5,404)
East Arcadia	1,841	877	(964)
Elizabethtown	106,249	45,212	(61,037)
Tar Heel	637	331	(307)
White Lake	15,255	14,189	(1,066)
Brunswick	**1,315,255**	1,165,693	(149,562)
Bald Head Island	37,562	2,429	(35,133)
Belville	823	1,809	986
Boiling Spring Lakes	13,055	39,322	26,266
Bolivia	1,802	4,725	2,923
Calabash	4,920	17,206	12,286
Carolina Shores	1,005	21,361	20,357
Caswell Beach	4,811	5,294	484
Holden Beach	14,204	15,012	807
Leland	8,375	42,572	34,197
Long Beach	4,473	-	(4,473)
Navassa	2,787	9,248	6,461
Northwest	59,571	13,956	(45,615)
Oak Island	15,149	115,988	100,839
Ocean Isle Beach	1,073	12,850	11,778
Sandy Creek	29,476	5,043	(24,433)
Shallotte	21,916	22,316	400
Southport	487	44,582	44,095
Saint James	15,808	11,644	(4,164)
Sunset Beach	1,866	32,888	31,022
Varnamtown		8,712	8,712
Yaupon Beach		-	-
Buncombe	**6,546,785**	3,580,010	(2,966,775)
Asheville	2,318,205	1,006,705	(1,311,499)
Biltmore Forest	53,143	39,239	(13,904)
Black Mountain	102,411	61,352	(41,059)
Montreat	22,141	16,069	(6,072)
Weaverville	71,928	34,142	(37,786)
Woodfin	49,608	16,250	(33,358)

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Burke	**2,406,170**	1,045,093	(1,361,077)
Connelly Springs	4,675	19,374	14,699
Drexel	59,291	25,626	(33,665)
Glen Alpine	10,192	13,245	3,053
Hickory		1,792	1,792
Hildebran	14,867	20,783	5,916
Long View		10,502	
Morganton	580,084	199,287	(380,796)
Rhodhiss		4,040	4,040
Rutherford College	6,400	15,791	9,391
Valdese	253,300	53,587	(199,713)
Cabarrus	**3,880,113**	1,900,675	(1,979,438)
Concord	1,660,628	684,184	(976,445)
Harrisburg	27,774	13,333	(14,440)
Kannapolis	657,741	228,238	(429,502)
Locust		15	15
Midland		489	489
Mount Pleasant	19,603	11,352	(8,252)
Caldwell	**2,437,306**	859,628	(1,577,678)
Blowing Rock		487	487
Cajah Mountain	1,204	32,297	31,094
Cedar Rock	2,715	3,863	1,148
Gamewell	1,558	43,683	42,125
Granite Falls	126,390	43,898	(82,492)
Hickory		-	-
Hudson	70,698	36,546	(34,152)
Lenoir	1,063,457	180,565	(882,893)
Rhodhiss	19,227	4,962	(14,265)
Sawmills	24,163	56,269	32,105
Camden	**118,760**	93,687	(25,073)
Elizabeth City		486	486
Carteret	**1,189,066**	1,049,539	(139,527)
Atlantic Beach	74,779	59,752	(15,026)
Beaufort	54,756	32,520	(22,236)
Bogue	1,321	451	(870)
Cape Carteret	14,872	11,760	(3,112)
Cedar Point	3,039	1,696	(1,343)
Emerald Isle	80,334	69,534	(10,800)
Indian Beach	7,311	6,186	(1,125)
Morehead City	176,297	90,561	(85,736)
Newport	24,686	17,588	(7,098)
Peletier	985	394	(591)
Pine Knoll Shores	28,605	22,857	(5,748)
Caswell	**432,325**	255,125	(177,200)
Milton	1,326	573	(753)

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Yanceyville	20,327	7,854	(12,473)
Catawba	**4,211,477**	2,111,472	(2,100,005)
Brookford	18,381	7,037	(11,344)
Catawba	14,209	10,909	(3,300)
Claremont	118,138	16,892	(101,247)
Conover	478,595	115,973	(362,622)
Hickory	1,798,446	565,334	(1,233,112)
Long View	189,479	60,309	(129,170)
Maiden	118,002	49,446	(68,556)
Newton	510,763	194,920	(315,843)
Chatham	**1,572,359**	676,332	(896,027)
Cary		43	43
Goldston	8,367	5,481	(2,886)
Pittsboro	42,094	32,140	(9,954)
Siler City	179,303	80,678	(98,625)
Cherokee	**483,033**	395,085	(87,948)
Andrews	30,939	34,676	3,737
Murphy	46,039	28,169	(17,870)
Chowan	**448,912**	213,033	(235,879)
Edenton	127,132	35,779	(91,353)
Clay	**166,722**	128,042	(38,680)
Hayesville	4,710	2,833	(1,877)
Cleveland	**2,680,820**	1,326,774	(1,354,046)
Belwood		-	-
Boiling Springs	24,582	14,405	(10,177)
Casar	784	154	(630)
Earl	693	255	(438)
Fallston	1,399	455	(945)
Grover	15,446	3,879	(11,567)
Kings Mountain*	162,516	59,380	(103,136)
Kingstown	4,791	2,383	(2,408)
Lattimore	1,200	744	(456)
Lawndale	19,743	2,816	(16,927)
Mooresboro		-	-
Patterson Springs		-	-
Polkville	1,260	311	(949)
Shelby	324,100	196,435	(127,665)
Waco	786	212	(575)
Columbus	**1,757,565**	602,540	(1,155,025)
Boardman	747	2,400	1,653
Bolton	4,530	6,212	1,682
Brunswick	3,981	3,514	(468)
Cerro Gordo	1,378	2,526	1,148
Chadbourn	31,618	24,078	(7,540)
Fair Bluff	11,963	13,021	1,057

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Lake Waccamaw	18,048	17,889	(159)
Sandyfield	1,791	3,399	1,608
Tabor City	79,416	28,040	(51,376)
Whiteville	226,990	64,254	(162,735)
Craven	**1,961,091**	1,237,764	(723,327)
Bridgeton	9,758	4,566	(5,193)
Cove City	1,993	797	(1,196)
Dover	2,888	1,586	(1,302)
Havelock	150,533	79,748	(70,785)
New Bern	474,536	297,976	(176,560)
River Bend	21,365	15,493	(5,872)
Trent Woods	22,367	14,038	(8,329)
Vanceboro	9,535	6,599	(2,936)
Cumberland	**5,231,949**	3,522,499	(1,709,450)
Falcon	1,323	4,634	3,310
Fayetteville	1,418,415	1,539,851	121,436
Godwin	458	881	423
Hope Mills	75,671	131,537	55,867
Linden	846	2,040	1,193
Spring Lake	62,262	103,371	41,109
Stedman	5,061	7,952	2,891
Wade	3,147	5,515	2,368
Currituck	**267,405**	419,883	152,478
Dare	**446,113**	1,033,401	587,288
Kill Devil Hills	63,222	119,087	55,865
Kitty Hawk	29,272	48,256	18,984
Manteo	40,773	27,988	(12,786)
Nags Head	52,495	109,761	57,266
Southern Shores	20,079	37,414	17,335
Davidson	**3,590,778**	1,827,775	(1,763,003)
Denton	51,555	20,132	(31,423)
High Point		9,925	9,925
Lexington	416,839	247,704	(169,135)
Thomasville	943,278	226,881	(716,397)
Davie	**2,571,572**	418,285	(2,153,287)
Bermuda Run	580	23,459	22,880
Cooleemee	8,464	13,601	5,137
Mocksville	326,134	56,193	(269,940)
Duplin	**1,068,664**	553,082	(515,582)
Beulaville	18,605	15,423	(3,182)
Calypso	7,703	6,475	(1,228)
Faison	43,898	9,619	(34,279)
Greenevers	2,276	6,947	4,671
Harrells		25	25
Kenansville	9,881	11,223	1,341

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Magnolia	5,647	10,489	4,843
Mount Olive		25	25
Rose Hill	32,768	17,971	(14,797)
Teachey	1,769	3,057	1,288
Wallace	53,616	42,604	(11,012)
Warsaw	92,782	37,720	(55,062)
Durham	**9,865,341**	2,940,805	(6,924,536)
Chapel Hill		20,651	20,651
Durham	3,680,605	2,447,025	(1,233,580)
Morrisville		-	-
Raleigh		29	29
Edgecombe	**1,702,759**	557,067	(1,145,692)
Conetoe	1,906	2,856	950
Leggett	470	1,103	633
Macclesfield	4,356	5,093	737
Pinetops	13,241	16,176	2,935
Princeville	19,963	22,238	2,275
Rocky Mount		178,149	178,149
Sharpsburg		1,175	1,175
Speed	444	897	453
Tarboro	436,539	109,209	(327,330)
Whitakers		4,505	4,505
Forsyth	**13,528,655**	4,299,819	(9,228,836)
Bethania	2,130	1,100	(1,031)
Clemmons	65,814	28,259	(37,554)
High Point		58	58
Kernersville	1,281,322	201,987	(1,079,335)
King		8,151	8,151
Lewisville	31,091	13,777	(17,314)
Rural Hall	45,592	17,675	(27,917)
Tobaccoville	5,954	1,656	(4,298)
Walkertown	30,435	13,972	(16,463)
Winston-Salem	7,919,187	1,952,499	(5,966,688)
Franklin	**932,591**	601,360	(331,231)
Bunn	4,685	2,713	(1,972)
Centerville		-	-
Franklinton	23,215	11,920	(11,295)
Louisburg	42,859	25,773	(17,085)
Youngsville	19,117	7,472	(11,645)
Gaston	**6,143,884**	2,133,080	(4,010,804)
Belmont	208,550	100,020	(108,530)
Bessemer City	112,004	58,937	(53,067)
Cherryville	101,719	64,359	(37,361)
Cramerton	65,083	30,262	(34,820)
Dallas	21,116	38,319	17,203

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Dellview		-	-
Gastonia	1,463,183	749,204	(713,979)
High Shoals	18,215	7,186	(11,029)
Kings Mountain		14,961	14,961
Lowell	91,142	30,509	(60,633)
McAdenville	353	9,668	9,315
Mount Holly	409,604	98,573	(311,031)
Ranlo	55,979	25,910	(30,068)
Spencer Mountain	1,841	1,529	(312)
Stanley	66,340	38,154	(28,186)
Gates	**233,369**	114,857	(118,512)
Gatesville	2,528	3,566	1,038
Graham	**159,541**	101,031	(58,510)
Robbinsville	54,620	10,571	(44,050)
Lake Santeetlah	2,728	591	(2,137)
Granville	**1,842,358**	573,919	(1,268,439)
Creedmoor	33,441	27,667	(5,774)
Oxford	208,066	115,870	(92,197)
Stem	2,626	3,662	1,036
Stovall	3,249	5,897	2,648
Greene	**445,629**	211,436	(234,193)
Hookerton	5,021	2,026	(2,995)
Snow Hill	18,002	9,127	(8,875)
Walstonburg	2,591	1,272	(1,318)
Guilford	**15,813,790**	5,351,911	(10,461,879)
Archdale		5,142	5,142
Burlington		259	259
Gibsonville	141,786	29,995	(111,791)
Greensboro	8,041,222	2,836,129	(5,205,093)
High Point	3,270,455	1,044,527	(2,225,928)
Jamestown	47,096	48,210	1,114
Kernersville		-	-
Oak Ridge	847	35,111	34,264
Pleasant Garden	1,455	60,345	58,890
Sedalia	201	8,326	8,125
Stokesdale	813	33,506	32,692
Summerfield	2,026	84,042	82,016
Whitsett	247	10,216	9,970
Halifax	**1,551,036**	660,003	(891,033)
Enfield	31,205	13,347	(17,858)
Halifax	3,198	1,649	(1,549)
Hobgood	3,274	1,584	(1,690)
Littleton	19,820	6,869	(12,950)
Roanoke Rapids	554,377	205,681	(348,696)
Scotland Neck	37,104	12,839	(24,264)

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Weldon	34,004	16,425	(17,578)
Harnett	**1,273,246**	1,071,831	(201,415)
Angier	35,064	25,618	(9,446)
Broadway		40	40
Coats	22,303	15,661	(6,642)
Dunn	257,080	88,262	(168,818)
Erwin	117,179	44,265	(72,914)
Lillington	80,512	32,436	(48,077)
Haywood	**1,262,259**	799,506	(462,753)
Canton	298,907	55,970	(242,938)
Clyde	11,393	17,526	6,133
Maggie Valley	17,699	9,929	(7,769)
Waynesville	185,212	151,365	(33,846)
Henderson	**3,327,296**	1,342,633	(1,984,663)
Flat Rock	829	31,184	30,355
Fletcher	70,551	54,706	(15,845)
Hendersonville	458,725	161,706	(297,019)
Laurel Park	52,667	35,064	(17,603)
Saluda		65	65
Hertford	**587,675**	300,121	(287,554)
Ahoskie	96,877	45,943	(50,933)
Cofield	34,962	2,590	(32,372)
Como	927	351	(576)
Harrellsville	782	424	(358)
Murfreesboro	53,138	21,912	(31,226)
Winton	27,465	7,005	(20,460)
Hoke	**690,891**	318,472	(372,419)
Raeford	244,943	46,666	(198,277)
Hyde	**137,755**	102,108	(35,647)
Iredell	**2,939,504**	1,821,930	(1,117,574)
Davidson		16	16
Harmony	2,255	9,341	7,086
Love Valley	501	1,284	783
Mooresville	520,232	255,928	(264,304)
Statesville	1,229,773	353,285	(876,488)
Troutman	66,438	32,509	(33,929)
Jackson	**622,160**	566,154	(56,006)
Dillsboro	2,944	2,426	(518)
Forest Hills	1,400	731	(670)
Highlands		1,182	1,182
Sylva	62,246	35,015	(27,231)
Webster	1,246	229	(1,016)
Johnston	**2,409,952**	1,787,438	(622,514)
Benson	38,930	27,979	(10,950)
Clayton	142,326	85,641	(56,685)

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Four Oaks	10,538	7,467	(3,071)
Kenly	26,198	14,185	(12,013)
Micro	3,124	2,041	(1,083)
Pine Level	9,268	6,448	(2,820)
Princeton	9,536	6,462	(3,074)
Selma	153,158	43,924	(109,233)
Smithfield	169,896	127,385	(42,511)
Wilson's Mills	1,989	1,005	(985)
Jones	**161,772**	93,226	(68,546)
Maysville	7,804	3,358	(4,447)
Pollocksville	2,868	1,118	(1,750)
Trenton	2,791	1,059	(1,732)
Lee	**1,656,688**	643,059	(1,013,629)
Broadway	15,168	14,703	(465)
Sanford	776,325	291,320	(485,004)
Lenoir	**1,794,441**	771,489	(1,022,952)
Grifton		630	630
Kinston	630,182	226,370	(403,812)
La Grange	29,095	13,934	(15,161)
Pink Hill	17,157	4,551	(12,606)
Lincoln	**1,698,424**	866,944	(831,480)
High Shoals	518,557	-	(518,557)
Lincolnton		149,883	149,883
Maiden		14	14
Macon	**567,223**	566,525	(698)
Franklin	68,958	45,844	(23,114)
Highlands	44,962	44,925	(37)
Madison	**326,526**	219,351	(107,175)
Hot Springs	8,352	6,484	(1,868)
Mars Hill	27,320	19,233	(8,087)
Marshall	24,892	10,137	(14,755)
Martin	**939,860**	361,870	(577,990)
Bear Grass	531	255	(277)
Everetts	1,552	676	(875)
Hamilton	3,853	1,882	(1,972)
Hassell	411	131	(280)
Jamesville	5,725	2,816	(2,909)
Oak City	3,367	1,670	(1,697)
Parmele	2,207	840	(1,368)
Robersonville	39,457	10,918	(28,539)
Williamston	171,449	55,319	(116,130)
McDowell	**1,214,640**	601,134	(613,506)
Marion	233,569	77,013	(156,556)
Old Fort	147,295	15,012	(132,283)
Mecklenburg	**24,379,846**	11,367,558	(13,012,288)

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Charlotte	13,815,551	5,353,527	(8,462,024)
Cornelius	127,918	117,792	(10,126)
Davidson	146,785	47,575	(99,210)
Huntersville	173,689	126,589	(47,099)
Matthews	267,855	121,671	(146,185)
Mint Hill	102,736	63,856	(38,880)
Pineville	121,657	40,431	(81,225)
Mitchell	**431,788**	229,473	(202,315)
Bakersville	5,249	3,591	(1,658)
Spruce Pine	84,426	36,386	(48,040)
Montgomery	**664,726**	287,543	(377,183)
Biscoe	44,837	19,240	(25,597)
Candor	19,102	8,699	(10,403)
Mount Gilead	51,417	16,007	(35,410)
Star	106,337	10,241	(96,095)
Troy	94,699	43,762	(50,937)
Moore	**2,771,784**	1,099,329	(1,672,455)
Aberdeen	185,496	56,982	(128,513)
Cameron	3,845	6,005	2,160
Carthage	44,523	30,240	(14,283)
Foxfire Village	13,004	6,705	(6,299)
Pinebluff	29,237	15,538	(13,699)
Pinehurst	392,276	134,018	(258,258)
Robbins	61,136	17,347	(43,789)
Southern Pines	536,906	155,045	(381,862)
Taylortown	13,525	11,691	(1,833)
Vass	24,415	11,327	(13,089)
Whispering Pines	65,240	27,701	(37,539)
Nash	**2,587,253**	1,098,582	(1,488,671)
Bailey	11,158	7,179	(3,979)
Castalia	1,545	3,281	1,736
Dortches	742	11,262	10,520
Middlesex	15,086	11,965	(3,121)
Momeyer	853	3,429	2,577
Nashville	75,939	50,757	(25,182)
Red Oak	2,131	32,551	30,420
Rocky Mount	1,320,225	502,345	(817,880)
Sharpsburg	15,529	16,418	889
Spring Hope	23,434	16,233	(7,202)
Whitakers	10,888	5,070	(5,818)
New Hanover	**4,733,498**	2,840,136	(1,893,362)
Carolina Beach	83,467	70,234	(13,233)
Kure Beach	30,278	23,112	(7,166)
Wilmington	1,868,621	1,020,397	(848,224)
Wrightsville Beach	76,873	54,873	(22,000)

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Northampton	**466,764**	199,770	(266,994)
Conway	17,048	7,438	(9,609)
Garysburg	9,452	10,308	857
Gaston	10,666	10,385	(281)
Jackson	6,158	5,369	(789)
Lasker	892	1,449	558
Rich Square	11,316	10,299	(1,017)
Seaboard	12,676	7,705	(4,970)
Severn	21,293	2,422	(18,870)
Woodland	8,134	7,085	(1,049)
Onslow	**1,650,487**	1,669,367	18,880
Holly Ridge	21,215	9,029	(12,186)
Jacksonville	514,329	832,938	318,610
North Topsail Beach	42,466	12,823	(29,644)
Richlands	13,412	14,297	885
Surf City		3,816	3,816
Swansboro	20,921	16,988	(3,933)
Orange	**3,183,344**	1,377,152	(1,806,192)
Carrboro	246,322	200,927	(45,395)
Chapel Hill	729,467	539,600	(189,868)
Durham		289	289
Hillsborough	103,392	67,524	(35,868)
Mebane		7,015	7,015
Pamlico	**249,962**	169,641	(80,321)
Alliance		-	-
Arapahoe	1,044	124	(920)
Bayboro	4,727	1,817	(2,911)
Grantsboro	1,319	335	(985)
Mesic	1,424	457	(968)
Minnesott Beach	2,503	1,425	(1,078)
Oriental	12,538	6,510	(6,028)
Stonewall	1,170	398	(773)
Vandemere	1,766	685	(1,081)
Pasquotank	**800,342**	518,602	(281,740)
Elizabeth City	294,253	185,766	(108,487)
Pender	**608,771**	495,533	(113,238)
Atkinson	2,456	4,234	1,778
Burgaw	36,821	47,454	10,633
Saint Helena	1,855	4,692	2,837
Surf City	36,737	11,101	(25,636)
Topsail Beach	17,994	5,824	(12,171)
Wallace		458	458
Watha	531	2,225	1,694
Perquimans	**187,613**	122,450	(65,163)
Hertford	18,578	26,141	7,564

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Winfall	3,991	5,282	1,291
Person	**764,084**	482,229	(281,855)
Roxboro	212,482	89,262	(123,220)
Pitt	**2,968,158**	1,664,115	(1,304,043)
Ayden	37,102	56,842	19,739
Bethel	16,991	22,174	5,183
Falkland	688	1,536	848
Farmville	149,829	58,950	(90,879)
Fountain	5,910	4,776	(1,134)
Greenville	931,830	759,411	(172,419)
Grifton	21,312	31,310	9,998
Grimesland	3,309	6,155	2,846
Simpson	3,519	5,531	2,011
Winterville	58,482	51,779	(6,703)
Polk	**976,829**	210,838	(765,991)
Columbus	37,343	11,124	(26,219)
Saluda	31,349	8,135	(23,215)
Tryon	101,603	23,071	(78,533)
Randolph	**3,058,549**	1,518,661	(1,539,888)
Archdale	124,894	103,636	(21,258)
Asheboro	950,335	235,092	(715,243)
Franklinville	5,221	11,169	5,948
High Point		757	757
Liberty	80,593	28,302	(52,291)
Ramseur	78,284	19,477	(58,807)
Randleman	123,508	39,771	(83,737)
Seagrove	12,520	3,210	(9,310)
Staley	2,310	4,088	1,778
Thomasville		-	-
Trinity	22,452	91,902	69,449
Richmond	**1,080,155**	576,203	(503,952)
Dobbins Heights	7,701	14,099	6,398
Ellerbee	19,819	14,814	(5,005)
Hamlet	78,395	85,554	7,159
Hoffman	2,336.	6,023	3,686
Norman	84	1,199	1,116
Rockingham	190,466	124,624	(65,842)
Robeson	**2,862,190**	1,458,511	(1,403,679)
Fairmont	71,173	37,723	(33,450)
Lumber Bridge	646	1,353	707
Lumberton	516,596	261,003	(255,593)
Marietta	326	2,845	2,519
Maxton	49,426	34,929	(14,497)
McDonald	314	1,126	811
Orrum	148	1,277	1,130

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Parkton	3,851	4,565	714
Pembroke	32,162	34,372	2,210
Proctorville	831	2,213	1,382
Raynham	534	1,530	997
Red Springs	46,480	49,282	2,801
Rennert	909	3,048	2,139
Rowland	21,333	14,189	(7,144)
Saint Pauls	55,838	28,593	(27,245)
Rockingham	**3,163,677**	1,013,677	(2,150,000)
Eden	476,774	173,459	(303,315)
Madison	153,544	27,312	(126,233)
Mayodan	97,816	28,147	(69,669)
Reidsville	634,679	162,039	(472,639)
Stoneville	58,538	13,080	(45,458)
Wentworth	1,050	22,127	21,078
Rowan	**3,948,513**	1,488,259	(2,460,254)
China Grove	49,482	45,890	(3,592)
Cleveland	120,524	10,778	(109,747)
East Spencer	36,048	28,144	(7,903)
Faith	9,729	8,672	(1,057)
Granite Quarry	48,118	25,329	(22,789)
Kannapolis		107,964	107,964
Landis	48,613	38,496	(10,117)
Rockwell	40,288	21,401	(18,887)
Salisbury	1,578,721	318,911	(1,259,810)
Spencer	69,149	39,442	(29,707)
Rutherford	**1,866,972**	838,500	(1,028,472)
Alexander Mills	1,964	-	(1,964)
Bostic	1,713	1,081	(633)
Chimney Rock Villag	2,935	1,420	(1,515)
Ellenboro	164,461	1,746	(162,715)
Forest City	45,447	44,745	(702)
Lake Lure	14,856	39,435	24,579
Ruth	109,585	2,470	(107,115)
Rutherfordton	187,004	46,022	(140,983)
Spindale		47,305	47,305
Sampson	**1,260,784**	678,663	(582,121)
Autryville	1,841	2,657	816
Clinton	333,996	121,171	(212,825)
Falcon		-	-
Faison		-	-
Garland	19,779	10,138	(9,641)
Harrells	2,222	2,531	310
Newton Grove	9,300	7,431	(1,868)
Roseboro	19,768	19,713	(55)

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Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Salemburg	7,026	5,339	(1,688)
Turkey	2,155	3,697	1,542
Scotland	**1,551,985**	513,701	(1,038,284)
East Laurinburg		-	-
Gibson	5,791	3,495	(2,296)
Laurinburg	169,418	100,067	(69,351)
Maxton		2,866	2,866
Wagram	6,176	4,012	(2,163)
Stanly	**1,489,307**	688,712	(800,595)
Albemarle	362,952	193,798	(169,154)
Badin	30,232	17,794	(12,437)
Locust	18,593	30,284	11,691
New London	2,153	5,772	3,619
Norwood	56,523	30,885	(25,637)
Oakboro	31,627	17,021	(14,606)
Richfield	4,397	6,963	2,566
Stanfield	11,994	11,986	(9)
Stokes	**3,483,045**	546,963	(2,936,082)
Danbury	842	599	(243)
King	68,237	36,864	(31,373)
Walnut Cove	17,792	10,963	(6,829)
Surry	**2,425,076**	1,143,186	(1,281,890)
Dobson	31,111	21,903	(9,208)
Elkin	311,342	64,580	(246,763)
Mount Airy	784,521	142,925	(641,596)
Pilot Mountain	91,657	21,421	(70,236)
Swain	**210,486**	178,493	(31,993)
Bryson City	23,001	16,065	(6,937)
Transylvania	**1,221,869**	494,836	(727,033)
Brevard	185,434	57,281	(128,153)
Rosman	8,049	1,334	(6,715)
Tyrrell	**103,133**	51,515	(51,618)
Columbia	7,627	2,461	(5,165)
Union	**2,684,821**	1,775,580	(909,241)
Hemby Bridge	6	275	270
Indian Trail	33,636	21,699	(11,937)
Lake Park	4,523	4,647	124
Marshville	33,461	18,789	(14,673)
Marvin	3,545	781	(2,764)
Mineral Springs	33	1,325	1,293
Monroe	735,910	315,508	(420,402)
Stallings	24,739	10,195	(14,544)
Unionville	28	1,265	1,237
Waxhaw	19,897	19,123	(774)
Weddington	13,260	3,681	(9,578)

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Wesley Chapel	3,905	851	(3,054)
Wingate	12,216	9,675	(2,540)
Vance	**1,418,579**	662,011	(756,568)
Henderson	433,425	169,170	(264,255)
Kittrell	19,805	117	(19,688)
Middleburg	673	420	(253)
Wake	**13,661,672**	8,766,161	(4,895,511)
Apex	427,022	262,563	(164,460)
Cary	1,395,168	1,376,476	(18,692)
Fuquay-Varina	247,544	103,083	(144,461)
Garner	270,693	273,694	3,001
Holly Springs	95,733	113,770	18,036
Knightdale	59,457	77,594	18,137
Morrisville	245,197	60,468	(184,729)
Raleigh	5,740,189	4,051,687	(1,688,502)
Rolesville	73,040	13,011	(60,029)
Wake Forest	248,601	178,352	(70,249)
Wendell	57,801	59,682	1,881
Zebulon	606,626	68,534	(538,092)
Warren	**425,618**	228,367	(197,251)
Macon	795	1,937	1,142
Norlina	7,046	12,900	5,854
Warrenton	24,554	11,781	(12,774)
Washington	**312,826**	152,825	(160,001)
Creswell	2,819	3,889	1,070
Plymouth	55,246	45,705	(9,541)
Roper	10,044	7,290	(2,753)
Watauga	**715,559**	740,158	24,599
Beech Mountain	59,607	4,754	(54,853)
Blowing Rock	72,734	23,208	(49,527)
Boone	250,137	256,354	6,217
Seven Devils	18,405	2,050	(16,355)
Wayne	**2,187,578**	1,491,138	(696,440)
Eureka	2,697	2,066	(631)
Fremont	40,584	10,888	(29,696)
Goldsboro	1,030,485	437,881	(592,604)
Mount Olive	142,207	52,701	(89,506)
Pikeville	17,665	7,326	(10,339)
Seven Springs	1,686	743	(943)
Walnut Creek	12,176	12,706	530
Wilkes	**1,791,831**	1,033,381	(758,450)
Elkin		1,199	1,199
North Wilkesboro	278,542	62,641	(215,901)
Ronda	6,558	5,916	(642)
Wilkesboro	179,271	51,928	(127,343)

2002-03 Sales Tax Swap
(January 1, 2003 effective date) No Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap
Wilson	**2,189,105**	957,230	(1,231,875)
Black Creek	4,594	3,334	(1,260)
Elm City	46,764	9,446	(37,318)
Kenly		617	617
Lucama	5,436	3,754	(1,682)
Saratoga	3,466	2,202	(1,264)
Sharpsburg		1,259	1,259
Sims	1,492	629	(863)
Statonsburg	4,699	3,048	(1,651)
Wilson	801,123	401,975	(399,148)
Yadkin	**806,898**	490,097	(316,801)
Arlington	5,248	2,831	(2,417)
Boonville	26,335	6,515	(19,819)
East Bend	7,810	6,032	(1,778)
Jonesville	30,081	18,572	(11,509)
Yadkinville	97,251	27,627	(69,624)
Yancey	**384,636**	254,310	(130,326)
Burnsville	48,621	24,161	(24,460)
GRAND TOTAL	333,381,470	157,885,333	
Assumptions:			
2001-02 Base for 1/2 Cent:			
Projections (accural)			
2002-03			
12 Month @ 0.0%	358,400,000		
12 Month @ 1.2%	**362,700,800**		
January 1 effective	**157,885,333**		
NOTE: Negative numbers in the column "Net Change from Swap"			
indicate actual losses.			

NORTH CAROLINA ASSOCIATION OF COUNTY COMMISSIONERS

ALBERT COATES LOCAL GOVERNMENT CENTER • 215 NORTH DAWSON STREET • P.O. BOX 1488
RALEIGH, NORTH CAROLINA 27602-1488 • TELEPHONE 919/715-2893 • FAX 919/733-1065

July 23, 2002

The Honorable William C. Owens, Jr.
House of Representatives
North Carolina General Assembly
Room 632, Legislative Office Building
Raleigh, North Carolina 27601-1096

Dear Bill:

I write in response to your request that the Association express our position on a proposed revenue package to assist both state and local governments and resolve the current impasse in the House of Representatives.

As we understand the proposal, it would advance the time at which the recently enacted (2001) one-half percent (1/2¢) state sales tax would be converted to a local option sales tax from July 1, 2003 to January 1, 2003. In addition, all local option sales taxes would be subject to monthly (rather than quarterly) distribution beginning October 2002.

The members of the Association recognize the dimensions of the budget crisis facing the State of North Carolina in the current budget year. We understand the drastic effects likely on the delivery of human services that will result if added revenues are not found, because we are the local mechanism through which these human services are delivered. We are also acutely aware of the reality that local governments will no longer receive "reimbursements" whether because of the General Assembly's action in the budget or because of action by the Governor. We remain concerned about counties and municipalities whose revenues are particularly affected by the loss of reimbursements because of their dependence on local taxes on property in the form of inventories or intangible property. We are pleased that the "hold harmless" provision that is part of the 2001 legislation will be effective with the 2003-04 fiscal year, and we retain the hope for some relief for those entities in the shorter term.

Given all these circumstances, and recognizing the impasse evident on the House floor last week, we believe that the proposal outlined above represents the best opportunity to resolve the issues to the mutual satisfaction of members of the House and members of our Association. **We pledge our support for this proposal as it moves through the House and stand ready to articulate that support whenever you ask us to do so.**

Sincerely,

C. Ronald Aycock
Executive Director

Attachment 8

North Carolina League of Municipalities www.nclm.org

Albert Coates Local Government Center, 215 North Dawson Street, Raleigh, NC 27603, PO Box 3069 (27602-3069)

July 24, 2002

Serving Cities and Towns Since 1908

Phone: (919) 715-4000
Fax: (919) 733-9519

The Honorable James B. Black
Speaker of the House of Representatives
Legislative Building, Room 2304
Raleigh, NC 27601-1096

Dear Mr. Speaker:

This is to let you know the League's position on a proposed compromise revenue package to assist both state and local governments and resolve the difficult situation in the House.

The proposal, as we understand it, would authorize a one-half cent local option sales tax, effective January 1, 2003, as a partial replacement for this fiscal year's reimbursements for previously repealed local taxes. The reimbursements would be repealed immediately, and the current state one-half cent sales tax would be repealed effective December 31, 2002. In addition, all local option sales taxes would be subject to monthly distribution, beginning October 2002.

It is essential that the bill include the provisions of **HB 1490 – Secure Local Revenues**. As you know, Governor Easley served notice last week that he might withhold the municipal utility franchise tax payments and other local revenues in this fiscal year. Our membership will not accept the withholding of additional local funds by the Governor in the new fiscal year. This legislation will prevent it.

We regret that this proposal does not include the hold harmless funds for this fiscal year to help the municipalities and counties that are reimbursement intensive. That will hurt some units significantly. As we have discussed, it is essential that the full hold harmless provisions become effective on July 1, 2003, as provided in the House committee substitute for HB 1633 that was defeated last week.

This compromise proposal represents a partial solution to the problem and appears to be the best we can get for our municipalities, with the situation being as it is. For that reason, we pledge our support for this proposal in the House, although reluctantly, and request that members of the House support it.

Sincerely,

S. Ellis Hankins
Executive Director

SEH/sb

President
Thomas M. Gwyn
Mayor, Elkin

First Vice President
Lois McIver Winstead
Mayor, Roxboro

Second Vice President
L. Stewart Rumley
Mayor, Washington

Immediate Past President
A. C. Robinson, Jr
Council Member
Elizabeth City

Executive Director
S. Ellis Hankins

cc: Speaker Pro Tem Joe Hackney
Rep. Philip Baddour
Rep. William Owens
Rep. Gordon Allen
Rep. Charles Buchanan
Rep. Paul Luebke
Rep. William Wainwright
Rep. Leo Daughtry

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

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

S1292-ALC-176 [v.1]

Date July 24 ,2002

Comm. Sub. [YES]
Amends Title [YES]
PCS

C. Wilson
Representative [redacted]

moves to amend the bill on page 1, line 4,
by adding after the phrase "RATE;" the phrase "TO REQUIRE APPROVAL OF THE VOTERS BEFORE THE LOCAL SALES TAX MAY BE ENACTED;";

and on page 2, lines 10-12, by rewriting the lines to read:

"**SECTION 1.1.** G.S. 105-517 reads as rewritten:

'**§ 105—517. Levy.**

(a) ~~After Vote.~~Authority. – If a majority of those voting in a special election held pursuant to this Article vote for the levy of the taxes in a county, the board of commissioners of a county may, by resolution, levy one—half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law.

~~(b) Without Vote. If the question of whether to levy taxes under this Article has not been defeated in a special election held in the county within two years, the board of commissioners of a county may, by resolution, levy one half percent (1/2%) local sales and use taxes in addition to any other State and local sales and use taxes levied pursuant to law. Before adopting a resolution under this subsection, the board of commissioners must give at least 10 days' public notice of its intent to adopt the resolution and must hold a public hearing on the issue of adopting the resolution.~~

(c) Effective Date. – A tax levied under this Article may not become effective

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

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

S1292-ALC-176 [v.1]

before ~~July~~ January 1, 2003.' "

SIGNED Connie Wilson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

(Revised 6-02)

Attachment 10

ROLL CALL VOTE

12 YES 21 NO = 33 (TOTAL)

HB#
SB# 1292

HOUSE STANDING COMMITTEE ON FINANCE C. Wilson Amendment

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		✓
Allen		✓	Weiss		✓
Blust	✓		Willingham		✓
Buchanan		✓	Wilson	✓	
Capps	✓		Womble		✓
Cox		✓			
Decker	✓				
Dedmon		✓			
Eddins					
Edwards		✓			
Gibson		✓			
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill		✓			
Holliman		✓			
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs	✓				
McMahan		✓	Ex officio Members		
Morris	✓		Majority Leader Baddour		✓
Pope	✓		Majority Whip Earle		✓
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				

12 21

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Attachment 11

H. B. No. _____ DATE July 24, 2002

S. B. No. 1292 Amendment No. 2 (to be filled in by Principal Clerk)

Rep.) Gray
Sen.)

moves to amend the bill on page 4, line 35

by adding the following on the line:

"Section 1.16. The definitions in GS 105-521 apply in this section. As soon as practicable after September 15, 2002, the Secretary of Revenue must determine for each ~~local government~~ county the product of its local sales tax share multiplied by the estimated amount that all ~~local governments~~ counties/local governments would be expected to receive during 2002-2003 if every county levied the tax under GS 105-517 effective January 1, 2003. The Secretary shall then ~~compare~~ subtract from this estimated tax amount for each ~~local government~~ county to the ~~local government's~~ county's repealed reimbursement amount. If the ~~balance for any local government exceeds 200% of the~~ repealed reimbursement amount is more than three times the estimated tax amount for any ~~local government~~ county, the Secretary must pay that ~~local government~~ county the excess of its repealed reimbursement amount over three times its estimated tax amount. The Secretary shall draw these funds from the source provided in G.S. 105-517(c)."

SIGNED Lyons Gray

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

(Revised 6-02)

Attachment 12

ROLL CALL VOTE

23 YES 10 NO = 33 (TOTAL)

HB#
SB# 1292
Amended ACS

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander	✓		Wainwright	✓	
Allen	✓		Weiss	✓	
Blust		✓	Willingham	✓	
Buchanan	✓		Wilson		✓
Capps		✓	Womble	✓	
Cox	✓				
Decker		✓			
Dedmon	✓				
Eddins					
Edwards	✓				
Gibson	✓				
Gray	✓				
Hackney (Speaker Pro Tem)	✓				
Hill	✓				
Holliman	✓				
Hurley	✓				
Jarrell	✓				
Johnson		✓			
Luebke	✓				
McComas		✓			
McCombs		✓			
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour	✓	
Pope		✓	Majority Whip Earle	✓	
Rayfield		✓	Majority Whip Cunningham	✓	
Starnes		✓			
				23	10

Final PCS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1292

Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
House Committee Substitute Favorable 7/17/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-PCS4747-LCx-103

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL LOCAL OPTION SALES TAX, THE REPEAL OF REIMBURSEMENTS, AND THE DECREASE IN THE STATE SALES TAX RATE; TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES OF TANGIBLE PERSONAL PROPERTY IN ANOTHER STATE OR COUNTRY WHERE THE SALES ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO

AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE SALES TAX SWAP

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July~~ January 1, 2003."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

[ ] FOR [ ] AGAINST

one-half percent (1/2%) local sales and use taxes, to replace the current one-half percent (1/2%) State sales and use taxes that end ~~July~~ January 1, 2003."

SECTION 1.3. G.S. 105-521(a)(3) reads as rewritten:

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

...

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections."

SECTION 1.4. G.S. 105-521, as amended by this act, is repealed effective July 1, 2012.

SECTION 1.5. Section 13(g) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(g)** This section becomes effective ~~July 1, 2003,~~October 1, 2002, and applies to amounts collected on or after that date."

SECTION 1.6. Section 34.13(c) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ January 1, 2003. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 1.7. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their~~

~~total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed under this section."

SECTION 1.8. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.9. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month beginning on or after ~~July 1, 2003.~~January 1, 2003, and on or before July 1, 2003. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before July 1, 2003, the county is required to give the Secretary of Revenue only 30 days' advance notice of the tax levy. For taxes levied ~~on or~~under Article 44 of Chapter 105 of the General Statutes that become effective after ~~January 1, 2004,~~July 1, 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.10. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 1.11. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General

Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.12. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.13.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.13.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article ~~shall be known as the "Local~~ is the First One-Cent (1¢) Local Government Sales and Use Tax ~~Act."~~Act."

SECTION 1.14.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article ~~shall be known as the Supplemental~~ is the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.15.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article ~~shall be known as the Additional Supplemental~~ is the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.16. The definitions in G.S. 105-521 apply in this section. As soon as practicable after September 15, 2002, the Secretary of Revenue must determine for each county the product of its local sales tax share multiplied by the estimated amount that all local governments would be expected to receive during the 2002-2003 fiscal year if every county levied the tax under G.S. 105-517 effective January 1, 2003. The Secretary must then compare this estimated tax amount for each county to the county's repealed reimbursement amount. If the repealed reimbursement amount is more than three times the estimated tax amount for any county, the Secretary must pay that county the excess of its repealed reimbursement amount over three times its estimated

tax amount. The Secretary must draw these funds from the source provided in G.S. 105-521(c).

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001,~~May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in

basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

SECTION 3.7.(a) G.S. 105-188(d) reads as rewritten:

"(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the

gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable."

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of

Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy

of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

PART IX. CLOSE CORPORATE TAX LOOPHOLES

SECTION 9.1.(a) G.S. 105-130.4(a)(1) reads as rewritten:

"(1) "Business income" means ~~income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.~~ all income that is apportionable under the United States Constitution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) Sales factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Not withstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Tangible personal property. – Sales of tangible personal property are excluded from the denominator if they are sales to the United States government or sales that are in a state in which the taxpayer is not taxable. Sales of tangible personal property are in this State if the property is received in this State by the ~~purchaser.~~purchaser and the purchaser is not the United States government. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales. – Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies. It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i) a~~A percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations. ~~under the limited liability company's~~

~~governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

MINUTES

HOUSE COMMITTEE ON FINANCE
July 24, 2002 P.M.

The House Committee on Finance met at 6:00 p. m. on Wednesday, July 24, 2002 in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Cox, Decker, Dedmon, Edwards, Gibson, Hackney, Holliman, Hurley, Johnson, McCombs, Morris, Pope, Rayfield, Weiss, Willingham, Wilson, Womble, Baddour, and Cunningham. Staff persons present included: Richard Bostic, David Crotts, Linda Millsaps, Canaan Huie, Martha Harris, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Visitor Registration Sheet is attached and incorporated as a part of these minutes.

Representative Wainwright called the meeting to order. The purpose of the meeting was to reconsider the amendment that was adopted at the Finance meeting earlier that day for **SB 1292, A BILL TO BE ENTITLED AND ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.** The amendment set up a different practice for "hold harmless" payments to the counties and the cities. The Proposed Committee Substitute before the committee, would provide a one-time payment in 2002 for those local governments that would lose the most revenue from the swap during 2002-2003. Representative Wainwright recognized Representative Buchanan for a motion to reconsider the Proposed Committee Substitute (PCS) for SB 1292. The motion carried and Representative

Wainwright recognized Representatives Luebke and Baddour to explain the PCS.

Representative Baddour stated that the bill provided for a partial payment in 2002-2003 to those local governments with the greatest loss. The change could be found in Section 1.16 on page 4 of the PCS. Representative Luebke said that the change added 113 municipalities. The affected cities and counties could be found in the 2002-03 Sales Tax Swap Table.

Representative Wilson sent forth an amendment to amend the bill on page 2, line 17, page 2, line 24, and page 2, line 41, and moved for its adoption. The amendment changed the effective date the locals would get the sales tax money from January 1, 2003 to October 1, 2002. The impact on the state budget would be $90 million. Representative Luebke spoke in opposition to the amendment. Mr. Hankins of the League of Municipalities stated that the cities and counties supported the PCS. Representative Wilson called for a roll call vote. The amendment failed by a vote of 21 no votes to 7 yes votes.

Representative Hackney moved for a favorable report to the House Proposed Committee Substitute subject to technical changes for the underlining on the new PCS. The new PCS was given a favorable report.

The meeting adjourned at 6:30 p.m.

Respectfully submitted,

Blinda Edwards, Committee Assistant

Representative William Wainwright
Presiding Chair

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ **HOUSE** Committee Substitute for
S.B. 1292 A BILL TO BE ENTITLED AN ACT TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES IN ANOTHER STATE OR COUNTRY WHERE THEY ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the HOUSE committee substitute bill (# 2), ☒ which changes the title, unfavorable as to ~~(the original bill)~~ (HOUSE Committee Substitute Bill # 1), ~~(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.

Final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1292

Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
House Committee Substitute Favorable 7/17/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-PCS6887-LCx-104

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL LOCAL OPTION SALES TAX, THE REPEAL OF REIMBURSEMENTS, AND THE DECREASE IN THE STATE SALES TAX RATE; TO PROVIDE NO HOLD HARMLESS PAYMENTS IN THE 2002-2003 FISCAL YEAR OTHER THAN A PAYMENT EQUAL TO THE EXCESS, IF ANY, OF A LOCAL GOVERNMENT'S REPEALED REIMBURSEMENT AMOUNT OVER THREE TIMES ITS ESTIMATED PROCEEDS FROM THE NEW TAX; TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES,

SALES OF TANGIBLE PERSONAL PROPERTY IN ANOTHER STATE OR COUNTRY WHERE THE SALES ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE SALES TAX SWAP

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July~~ January 1, 2003."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

[ ] FOR [ ] AGAINST

one-half percent (1/2%) local sales and use taxes, to replace the current one-half percent (1/2%) State sales and use taxes that end ~~July~~ January 1, 2003."

SECTION 1.3. G.S. 105-521(a)(3) reads as rewritten:

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

...

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections."

SECTION 1.4. G.S. 105-521, as amended by this act, is repealed effective July 1, 2012.

SECTION 1.5. Section 13(g) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(g)** This section becomes effective ~~July 1, 2003,~~October 1, 2002, and applies to amounts collected on or after that date."

SECTION 1.6. Section 34.13(c) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ January 1, 2003. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 1.7. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed under this section."

SECTION 1.8. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.9. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month beginning on or after ~~July 1, 2003.~~January 1, 2003, and on or before July 1, 2003. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before July 1, 2003, the county is required to give the Secretary of Revenue only 30 days' advance notice of the tax levy. For taxes levied ~~on or~~under Article 44 of Chapter 105 of the General Statutes that become effective after ~~January 1, 2004,~~July 1, 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.10. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 1.11. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.12. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.13.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.13.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article ~~shall be known as the "Local~~ is the First One-Cent (1¢) Local Government Sales and Use Tax ~~Act."~~Act."

SECTION 1.14.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article ~~shall be known as the Supplemental~~ is the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.15.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article ~~shall be known as the Additional Supplemental~~ is the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.16. The definitions in G.S. 105-521 apply in this section. As soon as practicable after September 15, 2002, the Secretary of Revenue must determine for each local government the product of its local sales tax share multiplied by the estimated amount that all local governments would be expected to receive during the 2002-2003 fiscal year if every county levied the tax under G.S. 105-517 effective January 1, 2003. The Secretary must then compare this estimated tax amount for each

local government to the local government's repealed reimbursement amount. If the repealed reimbursement amount is more than three times the estimated tax amount for any local government, the Secretary must pay that local government the excess of its repealed reimbursement amount over three times its estimated tax amount. The Secretary must draw these funds from the source provided in G.S. 105-521(c).

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002~~,2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003~~,2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001~~,May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income

in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

SECTION 3.7.(a) G.S. 105-188(d) reads as rewritten:

"(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article.

When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable."

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.4. G.S. 105-164.44F is amended by adding a new subsection to read:

"(f) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.5. G.S. 136-41.1 is amended by adding a new subsection to read:

"(d) Nature. – The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.6. G.S. 159B-27(d) reads as rewritten:

"(d) The State shall distribute to cities and towns which receive electric power and energy from their ownership share of a project or to which electric power and energy is sold by a joint agency an amount equal to a tax of three and nine hundredths percent (3.09%) of all moneys expended by a municipality on account of its ownership share of a project, including payment of principal and interest on bonds issued to finance such ownership share, or an amount equal to a tax of three and nine hundredths percent (3.09%) of the gross receipts from all sales of electric power and energy to such city or town by a joint agency, as the case may be. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.7. G.S. 143-25 reads as rewritten:

"**§ 143-25. Maintenance appropriations dependent upon adequacy of revenues to support them.**

(a) All maintenance appropriations now or hereafter made are hereby declared to be maximum, conditional and proportionate appropriations, the purpose being to make the appropriations payable in full in the amounts named herein if necessary and then only in the event the aggregate revenues collected and available during each fiscal year of the biennium for which such appropriations are made, are sufficient to pay all of the appropriations in full; otherwise, the said appropriations shall be deemed to be payable in such proportion as the total sum of all appropriations bears to the total amount of revenue available in each of said fiscal years. ~~The~~ Except as provided in subsection (b) of this section, the Director of the Budget is ~~hereby~~ given full power and authority to examine and survey the progress of the collection of the revenue out of which such appropriations are to be made, and to declare and determine the amounts that can be, during each quarter of each of the fiscal years of the biennium properly allocated to each respective appropriation. In making such examination and survey, ~~he~~ the Director of the Budget shall receive estimates of the prospective collection of revenues from the Secretary of Revenue and every other revenue collecting agency of the State. The Director of the Budget may reduce all of said appropriations pro rata when necessary to prevent an overdraft or deficit to the fiscal period for which such appropriations are made. The Governor may also reduce all of said appropriations pursuant to Article III, Section 5(3) of the Constitution in accordance with subsection (b) of this section, after

consulting with the Joint Legislative Commission on Governmental Operations under G.S. 120-76(8) if prior consultation is required by that section. The purpose and policy of this Article are to provide and insure that there shall be no overdraft or deficit in the general fund of the State at the end of the fiscal period, growing out of appropriations for maintenance and the Director of the Budget is directed and required to so administer this Article as to prevent any such overdraft or deficit. Prior to taking any action under this section to reduce appropriations pro rata, the Governor may consult with the Advisory Budget Commission.

(b) The General Assembly recognizes that it has required units of local government to adopt and maintain annual balanced budgets and take other steps to assure financially sound operations under the Local Government Budget and Fiscal Control Act and other provisions of Chapter 159 of the General Statutes. Accordingly, the General Assembly finds that in order to satisfy those statutory requirements and provide adequate services to their citizens, units of local government must be able to rely on the funds and local revenue sources the General Assembly has provided.

It is the intent of the General Assembly that funds that have been collected by the State on behalf of local governments and funds that the General Assembly has appropriated or otherwise committed to local governments shall not be reduced except as provided in this section. In exercising the powers contained in Section 5(3) of Article III of the Constitution, the Governor shall not withhold from distribution funds that have been collected by the State on behalf of local governments or funds that the General Assembly has appropriated or otherwise committed to local governments unless, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State according to their terms, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period and has been authorized to withhold the funds by an act of the General Assembly.

This subsection does not authorize the Governor to withhold revenues from taxes levied by units of local governments and collected by the State. The General Assembly recognizes that under Section 19 of Article I of the North Carolina Constitution and under the Due Process Clause of the United States Constitution, the State is prohibited from taking local tax revenue."

PART IX. CLOSE CORPORATE TAX LOOPHOLES

SECTION 9.1.(a) G.S. 105-130.4(a)(1) reads as rewritten:

"(1) "Business income" means ~~income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.~~ all income that is apportionable under the United States Constitution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) Sales factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Not withstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Tangible personal property. – Sales of tangible personal property are excluded from the denominator if they are sales to the United States government or sales that are in a state in which the taxpayer is not taxable. Sales of tangible personal property are in this State if the property is received in this State by the ~~purchaser.~~purchaser and the purchaser is not the United States government. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales. – Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"**EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs**

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies. It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i)~~ A percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations. ~~under the limited liability company's~~

~~governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

Senate Bill 1292:
Budget Revenue Act of 2002

BILL ANALYSIS

Committee: House Floor
Date: July 24, 2002
Version: 5th Edition

Introduced by: Senators Kerr and Hoyle
Summary by: Finance Team

SUMMARY: Senate Bill 1292 contains the following tax changes:

- *PART I accelerates the 2001 legislation establishing a sales tax swap, as follows:*
  - *Accelerates the effective date of the local option sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the sunset of the State's half-cent sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.*
  - *Does not accelerate the hold harmless for local governments beginning in the 2003-2004 fiscal year, but provides a partial payment in 2002-2003 to those local governments with the greatest loss. Also sunsets the hold harmless provision in 2012.*
  - *Accelerates the change from quarterly sales tax distributions to monthly sales tax distributions, from July 1, 2003, to October 1, 2002.*
- *PART II delays the income tax breaks enacted in 2001. This Part is identical to the Senate version.*
  - *The phase-in of the increase in the standard deduction for married taxpayers is delayed until January 1, 2003.*
  - *The phase-in of the additional child tax credit amount is delayed until January 1, 2003.*
- *PART III conforms North Carolina's tax laws to many of the federal tax law changes enacted in 2001 and 2002, and to the gift tax annual exclusion. Except for the gift tax change and a reduction in the bonus depreciation add-back, this Part is identical to the Senate version.*
  - *Conform to the educational provisions in EGTRRA.*
  - *Conform to the pension tax provisions in EGTRRA.*
  - *Conform to the net operating loss provisions in EGTRRA.*
  - *Conform to the miscellaneous provisions in EGTRRA and in the Job Creation and Worker Assistance Act of 2002.*
  - *Conform to the increased estate tax limits in EGTRRA.*
  - *The bill does NOT conform to either the phase-out of the State estate death tax credit in EGTRRA or the accelerated depreciation provisions in the Job Creation and Worker Assistance Act of 2002.*
- *PART IV provides that local governments will bear a portion of the costs associated with the collection of the drug tax. These costs are currently borne entirely by the General Fund. Except for a correction to the effective date, this Part is identical to the Senate version.*

- *PART V sets the insurance regulatory fee at 6.5% for the 2002 calendar year. This rate is the same as the 2001 rate. This Part is identical to the Senate version.*
- *PART VI sets the public utility regulatory fee at 0.1% for the 2002-2003 fiscal year. It also sets the electric membership corporation regulatory fee at $200,000 for the 2002-03 fiscal year. These rates are the same as the rates established last year. This Part is identical to the Senate version.*
- *PART VII is reserved.*
- *PART VIII seeks to secure local revenues in two ways, listed below. This Part is identical to House Bill 1490 as it passed the House. It is similar to the corresponding provision in the Senate version.*[1]
  - *It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.*
  - *It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized to withhold the funds by an act of the General Assembly.*
- *PART IX closes three corporate tax loopholes, as described below. There is no corresponding provision in the Senate version.*
  - *Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective beginning with the 2002 tax year.*
  - *Provides that sales that no state or country has the right to tax are "thrown out" of the calculation of profits to apportioned among the states, thereby increasing the percentage apportioned to North Carolina for the purpose of corporate income taxation, effective beginning with the 2002 tax year.*
  - *Tightens the 2001 legislation that was intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company, effective beginning with payments due in March 2003.*
- *PART X enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. There is no corresponding provision in the Senate version.*

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[1] The Senate version lacks the conforming change to the electric cities statute, and lacks the extra requirement that the Governor needs General Assembly authorization before releasing any funds committed to local governments.

PART I: ACCELERATE SALES TAX SWAP

State and Local Sales Tax Changes.

Part I of this bill accelerates many of the provisions enacted last session and modifies others. The 2001 legislation authorized counties to levy additional local sales taxes of ½%, effective July 1, 2003. Under this bill, the tax may become effective as early as January 1, 2003. The 2001 legislation imposed an additional State ½% sales tax that was set to expire July 1, 2003. The bill would sunset this State tax January 1, 2003. Thus, the combined State and local rate would never exceed 6 ½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax in the first 6 months of 2003 with a shortened notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. If the county enacts the tax effective to become effective in the first half of the 2003 calendar year, the tax may become effective on the first day of any month from January through July and the county must give the Secretary only 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are reinstated.

Under current law, counties are authorized to levy up to 2% local sales and use taxes[2]. All counties levy the maximum rate. The State collects the tax and distributes it quarterly to the counties and municipalities. In 2001, the General Assembly provided that local sales taxes must be distributed monthly rather than quarterly, effective July 1, 2003. This bill accelerates the effective date of the monthly distribution schedule to October 1, 2002.

Local Government Reimbursements.

In 2001, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002.

The 2001 legislation provided local governments "hold harmless" payments beginning in 2003-2004 if the amount they could potentially realize from the levy of the half-cent sales tax

[2] Mecklenburg County is authorized to levy up to 2 ½% local sales and use taxes.

was less than the amount they would lose from the reimbursements. This bill does not accelerate the hold harmless provision, so it will not be in effect for the 2002-2003 fiscal year. The bill does, however, provide a one-time payment in 2002 for those local governments that would lose the most revenue from the swap during 2002-2003. If a local government's loss from the repeal of the reimbursements exceeds three times its potential proceeds from the new tax, the Department of Revenue will pay the excess to the local government.

The full, annual hold harmless payments will begin September 15, 2003, under the provision enacted in the 2001 legislation. This bill sunsets these hold harmless payments after the September 15, 2011 payment. The Department of Revenue will make these hold harmless distribution annually, drawing the funds from State sales tax collections.

State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

PART II: DELAY 2001 TAX BREAKS

Last session, the General Assembly enacted two income tax breaks to become effective for 2002 tax year[3]: elimination of the marriage tax penalty[4] and an increased tax credit for children. Part II of this bill delays the enactment of these tax benefits.

Last session, the General Assembly reduced North Carolina income taxes on married couples that claim the standard deduction[5] by increasing the amount of the standard deduction for married filers so that it would be twice that of a single taxpayer. Since 1989, the basic standard deduction for a single person in North Carolina has been $3,000 while that for a married couple filing jointly has been $5,000. The increase in the deduction enacted in 2001 is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so the 2001 act also phased it up from $2,500 to

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[3] S.L. 2001-424, as amended by S.L. 2001-476, 2001-497, and 2001-489.

[4] The so-called married tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry, a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[5] Roughly 70% of North Carolina taxpayers claim the standard deduction.

$3,000 over the 2002 and 2003 tax years. Part II of this bill would delay by one year the phase-in of the increased deduction, so that it would occur over the 2003 and 2004 tax years.

In 2001, the General Assembly increased the $60 tax credit per child to $75 for the 2002 tax year and to $100 for the 2003 tax year. Part II of this bill would delay the phase-in of the credit increase until the 2003 and 2004 tax years. The 1995 General Assembly enacted the tax credit of $60 per child for taxpayers who have dependent children and have family adjusted gross income below $100,000 for a married couple and $80,000 for a head of household. Neither the 2001 act nor this bill changes the income thresholds. The credit is in addition to the federal and state tax credits or exclusions for child care expenses. The credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

PART III: UPDATE IRC REFERENCE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[6] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[7] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

Congress enacted two bills that have changed the Code significantly since January 1, 2001:

- The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), enacted on June 7, 2001, includes numerous changes to the taxation of pension benefits, accounts, distributions, and rollovers; of education initiatives; and of estates. All of the provisions of EGTRRA will expire on December 31, 2010, unless the provisions are renewed or modified by Congressional action.[8]
- The federal Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004, and an extension of the

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[6] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[7] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

[8] The Congressional Budget Act of 1974 mandates this sunset provision.

carryback period for net operating losses occurring in tax years ending in 2001 and 2002 from two years to five years.

Both of these acts will substantially affect a taxpayer's federal taxable income. Since North Carolina begins its corporate and individual income tax calculations with federal taxable income, these acts also have a substantial impact on North Carolina's tax revenues to the extent the State chooses to conform to those changes.

Part III of this bill rewrites the definition of the Code to change the reference date from January 1, 2001, to May 1, 2002. It then provides that a taxpayer must add to federal taxable income the amount allowed as an accelerated depreciation deduction under section 168(k) or 1400L of the Code and that a taxpayer's estate tax liability is determined without regard to the phase-out of the state death tax credit. In effect, Part III would do the following:

- Conform to all of the pension tax changes in the Code.
- Conform to all of the education initiatives in the Code.
- Conform to the increased estate tax exemption limitations.
- Not conform to the phase-out of the state death tax credit.
- Conform to the extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002.
- Delay the accelerated 30% bonus depreciation allowance.

Pension Tax Provisions: This Part conforms North Carolina's tax treatment of pension benefits and distributions to federal law. Some of the more notable changes EGTRRA made to the pension laws include:

- It allows taxpayers to contribute more to their tax-deferred retirement accounts. It gradually increases the amount that may be contributed to a 401(k), 403(b), and 457 accounts between 2002 and 2006. The contribution limit will increase to $15,000 in 2006. Starting in 2007, the limit will be indexed for inflation in $500 increments. It also allows persons who are 50 or older to make an additional catch-up contribution to their tax-deferred retirement accounts.
- It increases the amounts that may be contributed to both traditional IRAs and Roth IRAs from $2,000 in 2001 to $3,000 in 2002. This amount gradually increases to $5,000 for 2008. After 2008, this amount will be indexed annually for inflation. It also allows people over the age of 50 to make catch-up contributions to an IRA.
- It modifies the distribution rules for governmental 457 plan participants so that their deferred compensation funds will be taxed when they receive the distribution, not when it is made available to them.
- It repeals the coordination of deferrals between 457 and other elective deferral plans. Under former law, the maximum deferral amount for a 457 plan was reduced dollar for dollar by any contribution made to other types of retirement plans. The tax law change means that a person may defer the maximum annual contribution limit to a 457 plan as well as the maximum amount in a 401(k) or 403(b) plan.
- It expands the types of eligible tax-free rollover distributions to include distributions from qualified plans, 403(b) annuities, and 457 plans to other such plans and distributions from IRAs to qualified plans, 403(b) annuities, and 457 plans.

- It allows a surviving spouse to roll over distributions from a deceased spouse's plan to his or her own plan. Prior to this change, the tax-free rollover had to be made to an IRA.

Education Tax Provisions: This Part conforms North Carolina tax law on education incentives to the federal changes enacted last year. The more notable tax changes affecting education incentives include:

- It increases the annual maximum contribution limit to an education IRA from $500 to $2,000 per beneficiary.
- It allows education IRAs dollars to be used to cover expenses of students in grade, middle, and high schools.
- It eases the restrictions and limitations when using an Education IRA with other education initiatives, such as the Hope or Lifetime Learning tax credit.
- It moves the annual contribution deadline for Education IRAs from December 31 to April 15 of the following year.
- It provides that distributions from Section 529 Plans will be income-tax free up to the amount that is used to pay qualified higher education expenses.[9] Under former law, participants enjoyed only the benefit of tax-deferred contributions and investment growth.
- It allows a person to transfer 529 plan credits from one program to another for the benefit of the same beneficiary without incurring a taxable event.
- It extends the deduction for employer-paid college expenses to include graduate courses.

Estate Tax Provisions: North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced its inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government.[10] EGTRRA made two changes that affect the estate tax:

- It phases out the estate tax over the next eight years by increasing the exclusion amount from $675,000 in 2001 to $1 million in 2002-03, $1.5 million in 2004-05, $2 million in 2006-08, and $3.5 million in 2009. There is no need for an exemption amount after 2009 since the tax is repealed in 2010. However, the tax is scheduled to reapply in 2011 unless a future Congress makes the repeal permanent. If the tax were reinstated in 2011, the exclusion amount would be $1 million. **This bill would conform North Carolina's exemption limits to the federal exemption limits to ensure that estates in North Carolina do not have to pay State tax if there is no federal tax due.**
- It phases out the state death tax credit over the next four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and repealing it entirely in 2005. **This bill does NOT conform to the phase out of the state death tax credit for two years.**[11] Therefore, under

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[9] North Carolina currently allows tax free distributions for North Carolina plans. Section 3.5 of the bill repeals the State deduction.

[10] As of July 1, 2001, 36 other states, plus the District of Columbia, impose only the "pick-up tax".

[11] As of July 3, 2002 the following states have acted to decouple from the phase-out of the state death tax credit for some period of time or have introduced legislation to that effect: Connecticut, Illinois, Maine, Maryland,

this bill an estate of a decedent dying on or after January 1, 2002, and before January 1, 2004, would owe North Carolina estate tax to the same extent that it would be owed without regard to the phase-out of the credit. The January 1, 2004, sunset ensures that the State will have to revisit this issue next year.

Because North Carolina's estate tax is based upon the federal credit for state death taxes, the repeal of the state death tax credit in 2005 and the ultimate repeal of the federal estate tax in 2010 will mean that the State must decide whether to replace or repeal its estate tax in the future.

Accelerated Depreciation Provisions: Under the Job Creation and Worker Assistance Act of 2002, a taxpayer is allowed an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 11, 2001, and before September 11, 2004. The taxpayer is still entitled to the normal first-year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation. This provision affects both corporate and individual income taxpayers.

The change in federal law results in a taxpayer recovering the basis in the asset sooner than under former law; however, over the life of the asset the taxpayer still receives the same benefit. This bill does not conform State law to the accelerated depreciation schedule allowed under federal law.[12] However, under this bill a taxpayer will continue to be able to deduct the same amount of an asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this decoupling from the federal accelerated bonus depreciation, the bill does two things:

- For the first three years of the federal accelerated depreciation, it provides that a taxpayer must add back to federal taxable income a percentage of the additional 30% accelerated depreciation in the year the accelerated depreciation is claimed for federal purposes.[13] The percentage is 100% for the 2001 and 2002 taxable years and 80% for the 2003 taxable year. There is no add-back for the 2004 taxable year. The add-back for the first three years of the accelerated depreciation means that for State tax purposes, a taxpayer would deduct less in tax years 2001-2003 than the taxpayer would have deducted if the State conformed to the accelerated depreciation law. The amount of the deduction will be the

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Minnesota, Nebraska, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The following states will remain decoupled unless they take legislative action: Arkansas, District of Columbia, Kansas, New York, Oklahoma, Oregon, Virginia and Washington. (Source: Center on Budget and Policy Priorities)

[12] As of July 3, 2002, the following 22 states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin. In addition, New York City has decoupled from the bonus depreciation allowance. Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities; Tax Analysts)

[13] For tax years beginning before January 1, 2002, the add-back must be taken in the first taxable year beginning on or after January 1, 2002, so that the taxpayer will not recognize any retroactive tax increase.

normal first year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation amount allowed under federal law plus 30% of the bonus deprecation in 2003. In 2004, the State will have in effect conformed to the federal law and the entire bonus depreciation may be deducted.

- In tax years beginning on or after January 1, 2005, it provides that the taxpayer may deduct from federal taxable income the total amount of the add-backs required in earlier years, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years - the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Gift Tax Change: North Carolina imposes a gift tax on property transferred during the life of a donor. Gifts to a spouse are exempt from tax. The gift tax law allows an annual exclusion of $10,000.

The federal gift tax annual exclusion is more complex. Since 1998, the $10,000 federal gift tax annual exclusion has been subject to an inflation adjustment. The adjustment happens only in increments of $1,000 however. From 1998 until 2001, inflation had not grown enough to reach the first $1,000 increment. In 2002, that threshold was reached and the federal annual exclusion increased to $11,000. This amount won't increase to $12,000 until the cumulative inflation adjustment is at least 20%.

Section 3.7 of the bill amends North Carolina's gift tax annual exclusion to piggyback the federal amount, effective January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV of this bill would allocate to local governments 70% of the State's expenses in collecting the unauthorized substance tax. The expenses would be drawn from local sales tax revenues. Under current law, the following expenses are deducted from local sales tax distributions: costs of the Property Tax Division, costs of the Property Tax Commission, the costs of the Institute of Government in operating a training program in property tax appraisal and assessment, and the costs of the Local Government Commission.

The General Assembly first imposed the unauthorized substances tax in 1989 to generate revenue for State and local law enforcement agencies and for the General Fund. Seventy-five percent of the tax collected is distributed to the State or local law enforcement agency that

conducted the investigation that led to the tax assessment. The remaining 25% is credited to the General Fund. This bill does not change this revenue allocation.

PART V. INSURANCE REGULATORY CHARGE

Part V of this bill sets the insurance regulatory charge at the same rate as last year's rate: 6.5% for the 2002 calendar year. The insurance regulatory charge is a tax that was enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's premiums tax liability. The insurance regulatory charge is imposed on insurance companies, health maintenance organizations, and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations and health maintenance organizations do not pay premiums tax at that rate.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the tax rate for the public utility regulatory fee for the 2002-2003 tax year at the same rate as last year's rate: 0.1%. This rate must be set by the General Assembly each year. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of SL 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

Part VI also sets at $200,000 for the 2002-2003 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. This is the same rate that was in effect for the 2001-2002 fiscal year. The North Carolina Electric Membership Corporation is the only electric membership corporation that fits this description. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Corporation will be passed on to its member electric membership corporations.

PART VII: [RESERVED]

PART VIII: SECURE LOCAL REVENUES

Sections 8.1 through 8.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

- Section 8.1 - Beer and wine tax.
- Section 8.2 - Franchise gross receipts tax.
- Section 8.3 - Piped natural gas tax.
- Section 8.4 - Sales tax on telecommunications.
- Section 8.5 - Powell Bill funds.
- Section 8.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 8.7 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

PART IX: CLOSE CORPORATE TAX LOOPHOLES

This Part closes three corporate tax loopholes that allow some corporate profits to escape taxation and give corporate tax planners an opportunity to avoid existing taxes on corporate income and assets. The first loophole is caused by the definition of business income used in the corporate income tax law; the second loophole is caused by the treatment of certain sales in the formula for apportioning business income to the State for corporate income tax purposes; and the third loophole is caused by the different franchise tax treatment of corporations and limited liability companies.

Definition of Business Income: Section 9.1 of this Part amends the definition of "business income" to include all income that is apportionable under the U.S. Constitution, effective for taxable years beginning on or after January 1, 2002.

Corporations that do business in more than one state divide up their income among those states for income-tax purposes. Business income is apportioned based on a formula that takes into account how much sales, property, and payroll the corporation has in each state. Nonbusiness income is allocated to a state based on its connection with that state. In the most basic terms, nonbusiness income could be described as income that is earned in an unrelated sideline activity of the corporation.

As an analogy, each interstate corporation's income is in two "pies" - a business income pie that is divided up among the states in which it does business, and a nonbusiness income pie that is given entirely to the state it is connected to.

In an ideal system, all states would follow the same rules for dividing up interstate corporations' income for tax purposes, so that no more and no less than 100% of every corporation's net income would be subjected to state income tax. However, different states have different laws and even when the laws are the same, they may be interpreted differently. In theory, this can result in the taxation of more than 100%, as well as less than 100%, of a corporation's net income. In practice, corporate tax planners take the opportunity to create "nowhere" income - income that no state can tax. Instead of each state receiving its piece of the business income pie, some pieces are thrown away. Thus, although a corporation may do substantial business in North Carolina, much of its otherwise taxable business income may be characterized as nonbusiness, so that North Carolina gets no piece of it.

These tax avoidance schemes are possible not only because different states have different laws, but also because states such as North Carolina have laws that are vague or too narrow. In North

Carolina, income is business income if it relates to the regular trade or business of the taxpayer. This definition is vague and narrower than what is allowed under the United States Constitution. If North Carolina is entitled to tax a significant percentage of a corporation's business income, the corporation may try to shift much of its income into the nonbusiness pie, which North Carolina does not share in. This may be true even though the corporation has deducted as a business expense the same items that it now claims are not business items when the time comes to pay tax on profits. Recent court decisions in North Carolina have upheld this tax avoidance technique. Examples of the types of business income that corporations most often recharacterize are rents, royalties, gain or loss from the sale of property, interest, and dividends.

This proposal would change the definition of business income to include any income that the United States Constitution allows a state to treat as business income. This eliminates the current statute's vagueness and narrowness, which allow it to be used by corporations to create "nowhere" income that should otherwise be taxable in North Carolina. One effect of this change will be to include income from extraordinary events, such as a liquidation of a division, in apportionable income, consistent with the Department of Revenue's historical position, as illustrated by its administrative rules, before the North Carolina Supreme Court's decision in *Lenox v. Tolson.* A corporation's income earned out of state from unrelated business activity that makes up a discrete business enterprise would continue to be nonbusiness income that cannot be apportioned - it would continue to be allocated to the state to which it is connected.[14]

26 states including North Carolina use the vague, unnecessarily narrow definition of business income.

18 states have a broader definition of business income:

- 5 states have the law proposed in Section 9.1 of the bill (define business income as all that the U.S. Constitution allows state to apportion):
    1. Florida
    2. Iowa
    3. Minnesota
    4. Pennsylvania
    5. Texas
- 13 states apportion all corporate income. These states' approach would gain less revenue than the proposal in Section 9.1 because it would relinquish the right to tax true nonbusiness income of North Carolina-headquartered businesses. The 13 states include:
    1. Georgia
    2. South Carolina
    3. Virginia

In 1996, an economist with the Federal Reserve Bank of Boston published a study of the effect of state tax policy on economic development. The study looked at various manufacturing

[14] Several examples of the effect of this proposal are at the end of this summary.

industries in 22 states - including most major manufacturing states - and found no statistically significant correlation between business tax burdens and the location of new investment.

Throw-out Rule for Corporate Apportionment: Section 9.2 of Part IX would exclude certain out-of-state sales of tangible personal property from the base of the sales factor used to apportion business income to North Carolina, effective beginning with the 2002 tax year.

Like the previous provision, this proposal would bring under North Carolina's corporate income tax a part of a corporation's "nowhere" income that is currently not being taxed by any state. Under current law, the formula for determining how much of the business income pie goes to North Carolina focuses on sales, payroll, and property in North Carolina. The sales factor is a ratio of sales in North Carolina to all sales everywhere. Sales of tangible personal property are considered to be "in" the state[15] where the purchaser receives the item. Under the sales factor formula, the more sales a corporation has that are not in North Carolina, the smaller the sales factor used to calculate North Carolina's piece of the business income pie - because the formula assumes those sales will go into another state's piece of the business income pie.

But some sales of tangible personal property don't go into any state's piece of the pie. That may be because they are made in a state that cannot tax the corporation or because they are made to the federal government and so one cannot tell which state they are made in. Without the throw-out rule (or a similar rule called the throw-back rule), 50% to 100% of the profits of a state's corporations may be "no where" income, according to a 2002 article published by Michael Mazerov of the Center on Budget and Policy Priorities.

Under Section 9.2 of the bill, "nowhere" sales (sales of tangible personal property where the purchaser is the federal government or is located in a state or country that cannot tax the corporation) are excluded from the sales factor formula so that they do not reduce the ratio that determines how much of a corporation's business income North Carolina can tax. Thus, if another state cannot consider the sales in calculating its piece of the pie, the sales will not escape tax entirely - instead, there will be an increase in North Carolina's piece of the pie. If every state adopted the throw-out rule, then 100% of a corporation's interstate income would be taxed - there would be no "nowhere" income.

Here is an example of the throw-out rule. Corporation X has 20% of its sales in North Carolina, 20% of its sales in Virginia, and 60% of its sales in Tennessee. The corporation has no nexus with Virginia so Virginia cannot tax its income. Tennessee, like North Carolina current law, has no throw-out or throwback rule. Under current law, the sales factor for North Carolina would be 20% divided by 100%, or 1/5. The sales factor for Tennessee would be 60% divided by 100%, or 3/5. There is no sales factor for Virginia. Thus, the sales factors for North Carolina and Tennessee add up to only 4/5 of the company's sales. As a result, less than 100% of the company's business income will be apportioned to those states for taxation. If North Carolina adopted the throw-out rule, the 20% of sales to Virginia are subtracted from the denominator of

[15] Under North Carolina's law for apportioning income, the term "state" includes other countries.

the sales factor. Thus, North Carolina's sales factor would be 20% divided by 80%, or 1/4. Because 1/4 is more than 1/5, a larger proportion of the corporation's income would be allocated to North Carolina. If Tennessee also adopted the throw-out rule, its sales factor would be 60% divided by 80%, or 3/4. Thus, the sales factors for the two states would add up to 100% and all of the corporation's sales would be considered in apportioning its business income between the two states.

The throw-out rule and its sibling, the throwback rule, are not new. They predate the 1959 federal law limiting a state's ability to impose corporate income tax on corporations whose only connection with the state is soliciting orders there. The following information on states that do and do not have the throw-out rule or the throwback rule comes from Michael Mazerov of the Center on Budget and Policy Priorities. After the name of each state is listed the percent increase or decrease of manufacturing jobs in that state during the period 1995-2000. For that period, NC's manufacturing jobs decreased 9.5%.

21 States, including North Carolina, do NOT have a throw-out or throwback rule. These states include:

State	Job Loss or Gain
• Florida	0.0%
• Georgia	+0.1%
• South Carolina	-8.0%
• Tennessee	-5.7%
• Virginia	-3.5%

The following 25 States HAVE the throw-out or throwback rule. [16] (The underlined states have the throw-out rule.)

State	Job Loss or Gain
• Alabama	-7.9%
• Alaska	-18.3%
• Arkansas	-3.1%
• California	+8.4%
• Colorado	+6.7%
• Hawaii	+1.2%
• Idaho	+8.2%
• Illinois	-1.8%
• Indiana	+0.6%
• Kansas	+9.8%
• Maine	-6.5%

[16] Washington, D.C. also has the throwback rule, bringing the total to 26. In addition, Massachusetts technically has the throwback rule but Mazerov points out that its rule is full of loopholes so that it is not effective.

- Mississippi -9.3%
- Missouri -4.1%
- Montana +6.0%
- New Hampshire +3.0%
- New Jersey[17] -7.4%
- New Mexico -5.1%
- North Dakota +17.4%
- Oklahoma +6.7%
- Oregon +6.0%
- Texas +5.2%
- Utah +5.6%
- Vermont +8.4%
- West Virginia -2.1%
- Wisconsin +2.5%

According to Mazerov, this information shows that states with the throw-out and throwback rules (and the royalty loophole closing North Carolina enacted last year) are disproportionately represented among states with net manufacturing gains.

LLC Franchise Tax: In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole that allowed corporations to avoid franchise tax on their assets by transferring their assets to a controlled limited liability company (LLC). Corporations pay franchise tax on their assets but LLCs do not pay franchise tax on their assets. Tax planners helped many corporations avoid most of the franchise tax they would otherwise owe by setting up an LLC for the purpose of holding the assets on behalf of the corporation. Although the corporation's business continued in the same way, the corporation eliminated most of its franchise tax through this paper transaction.

The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[18] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

Section 9.3 of this Part broadens the approach of the 2001 legislation to include "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. This section would become effective beginning with payments due in March 2003. "Related members" is a term defined in

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[17] New Jersey just enacted the throwback rule in 2002.

[18] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

the "trademark royalties" provision of last year's loophole bill and includes shareholders, partnerships, etc.

If a corporation and its related members together indirectly own at least 70% of an LLC's assets, this Part provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme. The language of the bill accomplishes this by stating that the following percentage of the LLC's assets are taxable to the corporation: "The attributable percentage is equal to the percentage of the limited liability company's assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations."

Here is an example:

A parent corporation, its subsidiary, and a major shareholder of the parent form a partnership to own an LLC that will own assets on behalf of the parent and subsidiary. The LLC's documents provide that upon dissolution its assets are distributed as follows:

- Parent Corporation: 20%
- Subsidiary Corporation: 45%
- Shareholder: 35%

Under current law, the assets would remain free of franchise tax. If this Part were enacted, the parent corporation would pay franchise tax on 31% of the assets and the subsidiary corporation would pay franchise tax on 69% of the assets. Those are their relative shares of the total once you exclude the non-corporate owner.

The approach taken by this Part is much broader than the 2001 legislation and is intended to anticipate the creative paper relationships tax planners may devise to try and avoid the franchise tax. The breadth of the provision is such that it could apply to a "legitimate" situation, such as an individual who is the sole shareholder of a corporation and who later forms an LLC with an associate. Under this proposal, the corporation would pay tax on the LLC's assets. Unfortunately, there does not appear to be a way to distinguish this type of situation from one in which the corporation is manipulating relationships to avoid its franchise tax. With different tax treatment of similar entities, tax planners can try to manipulate relationships to fall into the untaxed category. Because corporations and LLCs are similar, there may not be a strong policy reason to treat them differently for franchise tax purposes.

PART X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

Part X of this bill enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal

credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two counties and 25% for buildings located in other tiers. In 2000, the General Assembly enacted legislation providing that the 75% credit is also allowed for buildings located in one of 26 counties that sustained severe or moderate damage from a hurricane in 1999. This increase in the amount of the credit was made effective for buildings that are allocated a federal credit on or after January 1, 2001. The federal tax credits are allocated in December of each year. Thus, those taxpayers who made investments in hurricane counties and were allocated federal credits in December 2000 are not eligible for the enhanced State credit. This act would backdate the effective date for eligibility for the enhanced State credit to from 2001 to 2000, thereby including those who were allocated federal credits for investments in hurricane counties during 2000.

EXAMPLES RELATING TO THE DEFINITION OF "BUSINESS INCOME" IN SECTION 9.1.

Investment in an unrelated corporation. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A buys stock in Corporation B. Corporation A and Corporation B are not involved in the same industry and the stock is held for investment purposes only. Corporation A does not actively participate in the management of Corporation B and does not integrate operations with Corporation B. Corporation A recognizes no economies of scale due to its ownership interest in Corporation B. Corporation A and B are not unitary. Corporation A sells the Corporation B stock and recognizes a capital gain. Under this bill, the capital gain is not apportionable to North Carolina. (See: Allied Signal, Inc. v. Director, Division of Taxation, 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992).) This income would also be nonapportionable, non-business income under current North Carolina law.

Reversion of excess pension funds. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A has made contributions to a defined-benefit employee pension plan for a number of years and has deducted these contributions from business income. The plan is found to be over-funded and a reversion of excess pension funds is allowed. The reverted funds are ordinary income for federal tax purposes. Under current North Carolina law, because the reversion is not a transaction that takes place in the regular course of business and because the right to a reversion is not an integral part of the corporation's regular course of business, the reverted funds are treated as non-business income and would not be subject to apportionment. (See: Union Carbide v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).) Under this bill, the reversion would be income subject to apportionment because it is income derived from a unitary business.

Liquidation of wholly-owned subsidiaries. Corporation X is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations A, B, and C are wholly owned subsidiaries of Corporation X. Corporations A, B, and C are domiciled in State 1 and have no business operations in North Carolina. Corporation X liquidates Corporations A, B,

and C and immediately distributes the proceeds of the liquidations to Corporation X's shareholders. Corporation X recognizes a capital gain from the liquidations.

Liquidation of Corporation A - There is centralized management between Corporations X and A and their operations are functionally integrated. Corporations X and A therefore constitute a unitary business, part of which is conducted in North Carolina. Under this bill, the proceeds of the liquidation of Corporation A would be subject to apportionment.

Liquidation of Corporation B - Corporations X and B are engaged in the same general line of business. Corporation B supplies Corporation X with the majority of a product used in Corporation X's manufacturing operations. Corporation B therefore performs an operational function in Corporation X's business. Under this bill, the proceeds of the liquidation of Corporation B would be subject to apportionment.

Liquidation of Corporation C - There is no centralized management, functional integration, or economies of scale between Corporations X and C, and Corporation C performs no operational function in Corporation X's business. Corporation C is not part of Corporation X's unitary business. Under this bill, the proceeds of the liquidation would not be subject to apportionment.

(Note: This bill removes the confusion under current law created by the decision in Lenox v. Tolson regarding the apportionability of income from the liquidation of an operating division or subsidiary. In *Lenox v. Tolson*, the Court found that the liquidation of a separate line of business was not a transaction in Lenox's regular course of business and was not a disposition of property integral to Lenox's regular trade or business. The Court held that the proceeds were therefore nonbusiness income and not apportionable. The Court, however, failed to analyze whether the acquisition or management of the property constituted integral parts of the corporation's regular trade or business, an analysis required under the actual language of the statute, the Department's administrative rules, and the Court's prior decision in *Polaroid v. Offerman*. As the dissent in Lenox points out, the property of ArtCarved was an integral part of Lenox's regular trade or business and the proceeds from the liquidation of this property should therefore have been apportionable business income under previous opinions of the Court.)

Receipt of dividends from wholly-owned subsidiaries. Corporation A is a retailer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations B, C, and D are wholly owned subsidiaries of Corporation A. Corporations B, C, and D are engaged in retailing in foreign countries. Corporation A has no functional integration and no centralized management with Corporations B, C, and D. Corporation A realizes no economies of scale due to its ownership of Corporations B, C, and D. Corporations B, C, and D are therefore not part of a unitary business with Corporation A. Corporations B, C, and D perform no operational function in Corporation A's business. Corporation A receives dividends from Corporations B, C, and D. Therefore, under this bill, as well as under current North Carolina law, this income would not be apportionable. (See: F.W. Woolworth Co. v. Taxation and Revenue Dept. of NM, 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819 (1982).)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

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

S1292-ALCx-178 [v.2]

Date July 24 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Representative C. Wilson

moves to amend the bill on page 2, line 17,
by rewriting the line to read:
"before ~~July 1, 2003.~~'October 1, 2002.' ";

and on page 2, line 24,
by rewriting the line to read:
"(1/2%) State sales and use taxes that end ~~July 1, 2003.~~' October 1, 2002.' ";

and on page 2, line 41,
by deleting the phrase "~~July~~ January 1, 2003." and substituting the phrase "~~July 1, 2003.~~October 1, 2002.";

and on page 3, line 35, through page 4, line 2, by rewriting the lines to read:
"**SECTION 1.9.** Section 34.14(b) of S.L. 2001-424 reads as rewritten:
`**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month during 2002 beginning on or after ~~July 1, 2003.~~October 1, 2002. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax during the ~~2003~~ 2002 calendar year under Article 44 of Chapter 105 of the General Statutes, as

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1292

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

S1292-ALCx-178 [v.2]

enacted by this act, that is to become effective on or before January 1, 2003, the county is required to give the Secretary of Revenue ~~only~~ the following notice:

(1) If the tax is to become effective October 1, 2002, the county must notify the Secretary on or before September 15, 2002.

(2) If the tax is to become effective on the first day of any other calendar month beginning on or before January 1, 2003, the county must give the Secretary 30 days' advance notice of the tax levy.

For taxes ~~levied on or~~that are to become effective after January 1, ~~2004,~~2003, the provisions of G.S. 105-466(c) apply.' "

SIGNED Connie Wilson
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

7-24-02
6:00p.m.

ROLL CALL VOTE

7 YES 21 NO = 28 (TOTAL)

HB# ____
SB# 1292

HOUSE STANDING COMMITTEE ON FINANCE C. Wilson Amendment

House Subcommittee on _____

YES	NO	MEMBER (last name)	YES	NO	MEMBER (last name)
	✓	Alexander		✓	Wainwright
	✓	Allen		✓	Weiss
✓		Blust		✓	Willingham
	✓	Buchanan	✓		Wilson
	✓	Capps		✓	Womble
	✓	Cox			
✓		Decker			
	✓	Dedmon			
	✓	Eddins			
	✓	Edwards			
	✓	Gibson			
	✓	Gray			
	✓	Hackney (Speaker Pro Tem)			
	✓	Hill			
	✓	Holliman			
	✓	Hurley			
	✓	Jarrell			
✓		Johnson			
	✓	Luebke			
		McComas			
	✓	McCombs			
		McMahan	Ex officio Members		
✓		Morris		✓	Majority Leader Baddour
✓		Pope			Majority Whip Earle
✓		Rayfield		✓	Majority Whip Cunningham
		Starnes			

7 21

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1292

Finance Committee Substitute Adopted 6/11/02
Third Edition Engrossed 6/13/02
House Committee Substitute Favorable 7/17/02
House Committee Substitute #2 Favorable 7/24/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1292-CSLC-104 [v.1]

Short Title: Budget Revenue Act of 2002. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO ACCELERATE THE ADDITIONAL LOCAL OPTION SALES TAX, THE REPEAL OF REIMBURSEMENTS, AND THE DECREASE IN THE STATE SALES TAX RATE; TO PROVIDE NO HOLD HARMLESS PAYMENTS IN THE 2002-2003 FISCAL YEAR OTHER THAN A PAYMENT EQUAL TO THE EXCESS, IF ANY, OF A LOCAL GOVERNMENT'S REPEALED REIMBURSEMENT AMOUNT OVER THREE TIMES ITS ESTIMATED PROCEEDS FROM THE NEW TAX; TO DELAY THE INCREASE IN THE CHILD TAX CREDIT BY ONE YEAR; TO DELAY THE INCREASE IN THE STANDARD DEDUCTION FOR MARRIED PERSONS BY ONE YEAR; TO UPDATE THE REFERENCE DATE TO THE INTERNAL REVENUE CODE USED TO DEFINE AND DETERMINE CERTAIN STATE TAX PROVISIONS; TO CONFORM TO THE FEDERAL ANNUAL EXCLUSION AMOUNT FOR GIFT TAXES; TO DELAY THE EFFECT OF ACCELERATED DEPRECIATION UNDER SECTION 168 OF THE CODE AND SECTION 1400L OF THE CODE; TO DISREGARD THE PHASE-OUT OF THE STATE DEATH TAX CREDIT UNDER THE CODE; TO ALLOW THE SECRETARY OF REVENUE TO RECOUP A PORTION OF THE COSTS OF ADMINISTERING THE UNAUTHORIZED SUBSTANCES TAX FROM LOCAL SALES AND USE TAX DISTRIBUTIONS; TO SET THE INSURANCE REGULATORY FEE AND THE PUBLIC UTILITY REGULATORY FEES; TO PROVIDE THAT LOCAL REVENUES MAY NOT BE WITHHELD OR IMPOUNDED BY THE GOVERNOR; TO CONFORM THE DEFINITION OF BUSINESS INCOME TO FEDERAL STANDARDS; TO PROVIDE THAT IN APPORTIONING

CORPORATE INCOME TO THIS STATE FOR INCOME TAX PURPOSES, SALES OF TANGIBLE PERSONAL PROPERTY IN ANOTHER STATE OR COUNTRY WHERE THE SALES ARE NOT TAXABLE ARE NOT CONSIDERED; TO CLOSE A LOOPHOLE IN THE 2001 LEGISLATION INTENDED TO CLOSE A LOOPHOLE THAT ALLOWS CORPORATIONS TO AVOID FRANCHISE TAX LIABILITY BY TRANSFERRING ASSETS TO A LIMITED LIABILITY COMPANY; AND TO ENLARGE THE CLASS OF TAXPAYERS ELIGIBLE FOR AN ENHANCED CREDIT FOR INVESTING IN LOW-INCOME HOUSING IN A COUNTY THAT SUSTAINED SEVERE OR MODERATE DAMAGE FROM A HURRICANE IN 1999.

The General Assembly of North Carolina enacts:

PART I. ACCELERATE SALES TAX SWAP

SECTION 1.1. G.S. 105-517(c) reads as rewritten:

"(c) Effective Date. – A tax levied under this Article may not become effective before ~~July~~ January 1, 2003."

SECTION 1.2. G.S. 105-518(b) reads as rewritten:

"(b) Ballot Question. – The question to be presented on a ballot for a special election concerning the levy of the taxes authorized by this Article must be in the following form:

[ ] FOR [ ] AGAINST

one-half percent (1/2%) local sales and use taxes, to replace the current one-half percent (1/2%) State sales and use taxes that end ~~July~~ January 1, 2003."

SECTION 1.3. G.S. 105-521(a)(3) reads as rewritten:

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

...

(3) Repealed reimbursement amount. – The total amount a local government would have been entitled to receive during the ~~2002-2003~~ 2001-2002 fiscal year under G.S. 105-164.44C, 105-275.1, 105-275.2, 105-277.001, and 105-277.1A, if the Governor had not withheld any distributions under those sections."

SECTION 1.4. G.S. 105-521, as amended by this act, is repealed effective July 1, 2012.

SECTION 1.5. Section 13(g) of S.L. 2001-427 reads as rewritten:

"**SECTION 13.(g)** This section becomes effective ~~July 1, 2003,~~October 1, 2002, and applies to amounts collected on or after that date."

SECTION 1.6. Section 34.13(c) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.13.(c)** This section becomes effective October 16, 2001, and applies to sales made on or after that date. This section is repealed effective for sales made on or after ~~July~~ January 1, 2003. This section does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this section before the effective date of its amendment or repeal; nor does it affect the right

to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal."

SECTION 1.7. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-269.14(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute ~~one-third~~ a portion of the net use tax proceeds collected under this section to counties and ~~cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available.~~ cities. The portion to be distributed to all counties and cities is the total net use tax proceeds collected under this section multiplied by a fraction. The numerator of the fraction is the local use tax proceeds collected under this section. The denominator of the fraction is the total use tax proceeds collected under this section. The Secretary must distribute this portion to the counties and cities in proportion to their total distributions under Articles 39, 40, 42, 43, and 44 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data are available. The provisions of G.S. 105-472, 105-486, ~~and 105-501~~ 105-501, and 105-520 do not apply to tax proceeds distributed under this section."

SECTION 1.8. G.S. 159-15 reads as rewritten:

"**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives additional and unanticipated revenues, the governing body may, before January 1, amend the budget ordinance to reduce the property tax levy to account for the unanticipated revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered in the minutes."

SECTION 1.9. Section 34.14(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.14.(b)** Notwithstanding the provisions of G.S. 105-466(c), a tax levied ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, may become effective on the first day of any calendar month beginning on or after ~~July 1, 2003.~~January 1, 2003, and on or before July 1, 2003. Notwithstanding the provisions of G.S. 105-466(c), if a county levies a tax ~~during the 2003 calendar year~~ under Article 44 of Chapter 105 of the General Statutes, as enacted by this act, that is to become effective on or before July 1, 2003, the county is required to give the Secretary of Revenue only 30 days' advance notice of the tax levy. For taxes levied ~~on or~~under Article 44 of Chapter 105 of the General Statutes that

become effective after ~~January 1, 2004,~~July 1, 2003, the provisions of G.S. 105-466(c) apply."

SECTION 1.10. Section 34.15(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.15.(b)** This section becomes effective July 1, ~~2003.~~2002."

SECTION 1.11. To the extent the Department of Revenue's nonrecurring costs of implementing and administering Article 44 of Chapter 105 of the General Statutes, as amended, exceed funds available in its budget for the 2002-2003 fiscal year, the Department may pay the excess cost by withholding up to two hundred seventy-five thousand dollars ($275,000) from collections under Subchapter VIII of Chapter 105 of the General Statutes.

SECTION 1.12. The Department of Revenue may contract for supplies, materials, equipment, and contractual services related to the provision of notice, the creation of tax forms and instructions, and the development of computer software necessitated by the amendments in this act without being subject to the requirements of Article 3 or Article 8 of Chapter 143 of the General Statutes.

SECTION 1.13.(a) The title of Article 39 of Chapter 105 of the General Statutes reads as rewritten:

"Article 39.

First One-Cent (1¢) Local Government Sales and Use Tax."

SECTION 1.13.(b) G.S. 105-463 reads as rewritten:

"**§ 105-463. Short title.**

This Article ~~shall be known as the "Local~~ is the First One-Cent (1¢) Local Government Sales and Use Tax ~~Act."~~Act."

SECTION 1.14.(a) The title of Article 40 of Chapter 105 of the General Statutes reads as rewritten:

"Article 40.

~~Supplemental~~ First One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.14.(b) G.S. 105-480 reads as rewritten:

"**§ 105-480. Short title.**

This Article ~~shall be known as the Supplemental~~ is the First One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.15.(a) The title of Article 42 of Chapter 105 of the General Statutes reads as rewritten:

"Article 42.

~~Additional Supplemental~~ Second One-Half Cent (1/2¢) Local Government Sales and Use ~~Taxes.~~Tax."

SECTION 1.15.(b) G.S. 105-495 reads as rewritten:

"**§ 105-495. Short title.**

This Article ~~shall be known as the Additional Supplemental~~ is the Second One-Half Cent (1/2¢) Local Government Sales and Use Tax Act."

SECTION 1.16. The definitions in G.S. 105-521 apply in this section. As soon as practicable after September 15, 2002, the Secretary of Revenue must determine for each local government the product of its local sales tax share multiplied by the estimated amount that all local governments would be expected to receive during the

2002-2003 fiscal year if every county levied the tax under G.S. 105-517 effective January 1, 2003. The Secretary must then compare this estimated tax amount for each local government to the local government's repealed reimbursement amount. If the repealed reimbursement amount is more than three times the estimated tax amount for any local government, the Secretary must pay that local government the excess of its repealed reimbursement amount over three times its estimated tax amount. The Secretary must draw these funds from the source provided in G.S. 105-521(c).

PART II. DELAY 2001 TAX BREAKS

SECTION 2.1.(a) The lead-in language of Section 34.19(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-134.6(c)(3) and (4) reads as rewritten:".

SECTION 2.1.(b) The lead-in language of Section 34.19(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.19.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-134.6(c)(4), as amended by this section, reads as rewritten:".

SECTION 2.2.(a) The lead-in language of Section 34.20(a) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(a)** Effective for taxable years beginning on or after January 1, ~~2002,~~2003, G.S. 105-151.24 reads as rewritten:".

SECTION 2.2.(b) The lead-in language of Section 34.20(b) of S.L. 2001-424 reads as rewritten:

"**SECTION 34.20.(b)** Effective for taxable years beginning on or after January 1, ~~2003,~~2004, G.S. 105-151.24, as amended by this section, reads as rewritten:".

PART III. UPDATE IRC REFERENCE

SECTION 3.1. G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 1, 2001,~~May 1, 2002, including any provisions enacted as of that date which become effective either before or after that date."

SECTION 3.2.(a) G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(a) The following additions to federal taxable income shall be made in determining State net income:

...

(15) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose

North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(b) G.S. 105-134.6(c) is amended by adding a new subdivision to read:

"(c) Additions. – The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:

...

(8) The applicable percentage of the amount allowed as a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code, as set out in the table below. In addition, a taxpayer who was allowed a thirty percent (30%) accelerated depreciation deduction under section 168(k) or section 1400L of the Code in a taxable year beginning before January 1, 2002, and whose North Carolina taxable income in that earlier year reflected that accelerated depreciation deduction must add to federal taxable income in the taxpayer's first taxable year beginning on or after January 1, 2002, an amount equal to the amount of the deduction allowed in the earlier taxable year. These adjustments do not result in a difference in basis of the affected assets for State and federal income tax purposes. The applicable percentage is as follows:

Taxable Year	Percentage
2002	100%
2003	70%
2004 and thereafter	0%"

SECTION 3.2.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.3.(a) G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(21) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the

amount added to taxable income in a previous year as accelerated depreciation under subdivision (a)(15) of this section."

SECTION 3.3.(b) G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. – The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

...

(17) In each of the taxpayer's first five taxable years beginning on or after January 1, 2005, an amount equal to twenty percent (20%) of the amount added to taxable income in a previous year as accelerated depreciation under subdivision (c)(8) of this section."

SECTION 3.3.(c) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 3.4.(a) G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the ~~Code.~~ Code without regard to the phase-out of that credit under subdivision (b)(2) of that section. If any property in the estate is located in a state other than North Carolina, the amount of tax payable is the North Carolina percentage of the credit.

If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.

The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate."

SECTION 3.4.(b) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. This section is repealed effective for the estates of decedents dying on or after January 1, 2004.

SECTION 3.5. Effective for taxable years beginning on or after January 1, 2002, G.S. 105-134.6(b)(13) is repealed.

SECTION 3.6. Notwithstanding Section 3.1 of this act, any amendments to the Internal Revenue Code enacted in 2001 that increase North Carolina taxable income for the 2001 taxable year become effective for taxable years beginning on or after January 1, 2002.

SECTION 3.7.(a) G.S. 105-188(d) reads as rewritten:

"(d) Annual Exclusion. – The annual exclusion amount is equal to the federal inflation-adjusted exclusion amount provided in section 2503(b) of the Code. Gifts not

exceeding a total value ~~of ten thousand dollars ($10,000)~~equal to the annual exclusion amount made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value ~~of ten thousand dollars ($10,000)~~ equal to the annual exclusion amount are made to any one donee in a calendar year, only the portion of the gifts exceeding ~~ten thousand dollars ($10,000)~~the annual exclusion amount in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the ~~exclusion herein provided,~~annual exclusion, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of ~~such~~ the transfer ~~shall be~~is considered a gift of a future interest in property if the property and the income therefrom meet all of the following conditions: (i) they may be expended by, or for the benefit of, the donee before ~~his attaining~~the donee reaches the age of 21 ~~years, and~~years; (ii) they will to the extent not so expended pass to the donee ~~on his attaining~~when the donee reaches the age of 21 ~~years, and~~years; and (iii) they will, in the event the donee dies before ~~attaining the age of 21 years,~~reaching that age, be payable to the estate of the donee or as ~~he~~ the donee may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion ~~provided that~~ if both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions ~~shall~~ must be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable."

SECTION 3.7.(b) This section is effective January 1, 2002, and applies to gifts made on or after that date."

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

SECTION 4.1. G.S. 105-501 is amended by adding a new subdivision to read:

"...

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

...

(1a) Seventy percent (70%) of the expenses of the Department of Revenue in performing the duties imposed by Article 2D of this Chapter.

...."

SECTION 4.2. This Part becomes effective June 30, 2002.

PART V. INSURANCE REGULATORY CHARGE

SECTION 5.(a) The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is six and one-half percent (6.5%) for the 2002 calendar year.

SECTION 5.(b) This section is effective when it becomes law.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

SECTION 6.(a) The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is one-tenth percent (0.1%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2002.

SECTION 6.(b) The electric membership corporation regulatory fee imposed under G.S. 62-302(b1) for the 2002-2003 fiscal year is two hundred thousand dollars ($200,000).

SECTION 6.(c) This section becomes effective July 1, 2002.

PART VII. RESERVED

PART VIII. SECURE LOCAL REVENUES

SECTION 8.1. G.S. 105-113.82(d) reads as rewritten:

"(d) Time. – The revenue shall be distributed to cities and counties within 60 days after March 31 of each year. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.2. G.S. 105-116.1(b) reads as rewritten:

"(b) Distribution. – The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 8.3. G.S. 105-187.44(b) reads as rewritten:

"(b) Distribution. – Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section. The General Assembly finds that the revenue distributed under this section is local revenue, not a State expenditure, for the purpose of Section 5(3) of Article III of the North Carolina Constitution. Therefore, the Governor may not reduce or withhold the distribution."

SECTION 9.1.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.2.(a) G.S. 105-130.4(l) reads as rewritten:

"(l) (1) Sales factor. – The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Not withstanding any other provision under this Part, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Tangible personal property. – Sales of tangible personal property are excluded from the denominator if they are sales to the United States government or sales that are in a state in which the taxpayer is not taxable. Sales of tangible personal property are in this State if the property is received in this State by the ~~purchaser.~~purchaser and the purchaser is not the United States government. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

(3) Other sales. – Other sales are in this State if:

a. The receipts are from real or tangible personal property located in this State; or

b. The receipts are from intangible property and are received from sources within this State; or

c. The receipts are from services and the income-producing activities are in this State."

SECTION 9.2.(b) This section is effective for taxable years beginning on or after January 1, 2002.

SECTION 9.3.(a) Section 2(a) of S.L. 2001-327 reads as rewritten:

"**EQUALIZE FRANCHISE TAX ON CORPORATE-AFFILIATED LLCs**

SECTION 2.(a) The General Assembly finds that most corporations engaged in business in this State comply with the State franchise tax on corporate assets. Some taxpayers, however, take advantage of an unintended loophole in the law and avoid franchise tax by transferring their assets to a controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of this section to apply the franchise tax equally to assets held by corporations and assets held by corporate-affiliated limited liability companies.

It is also the intent of this section to provide that a criminal penalty applies to taxpayers who fraudulently evade the tax.

The General Assembly further finds that, after this loophole was closed in 2001, some taxpayers continue to avoid franchise tax by manipulating ownership of assets. One method is to interpose a controlled partnership between the corporation and the controlled limited liability company. This tax avoidance creates an unfair burden on corporate citizens that pay the franchise tax on their assets. It is the intent of the General Assembly to apply the franchise tax equally to assets held by corporations and assets held by corporate-controlled entities."

SECTION 9.3.(b) G.S. 105-114(c) is recodified as G.S. 105-114.1 and reads as rewritten:

"**§ 105-114.1. Limited liability companies.**

(a) Definitions. – The definitions in G.S. 105-130.7A apply in this section. In addition, the following definitions apply in this section:

(1) Governing law. – A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable.

(2) Owned indirectly. – A person owns indirectly assets of a limited liability company if the limited liability company's governing law provides that seventy percent (70%) or more of its assets, after payments to creditors, must be distributed upon dissolution to the person as of the last day of the principal corporation's taxable year.

(3) Principal corporation. – A corporation that is a member of a limited liability company or has a related member that is a member of a limited liability company.

(b) Controlled Companies. – If a corporation or a related member of the corporation is a member of a limited liability company and the principal corporation and any related members of the principal corporation together own indirectly ~~the limited liability company's governing law provides that~~ seventy percent (70%) or more of ~~its~~ the limited liability company's assets, ~~after payments to creditors, must be distributed upon dissolution to the member corporation or to includible corporations of an affiliated group in which the member corporation is includible,~~ then the following provisions apply:

(1) ~~(i)~~ aA percentage of the limited liability company's income, assets, liabilities, and equity is attributed to that ~~member~~ principal corporation and must be included in the ~~member~~ principal corporation's computation of tax under this ~~Article, and (ii) the~~ Article.

(2) The principal ~~member~~ corporation's investment in the limited liability company is not included in the ~~member~~ principal corporation's computation of tax under this Article.

(3) The attributable percentage is equal to the percentage of the limited liability company's ~~assets, after payments to creditors, that would be distributable to the member corporation~~ assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal

corporation that are corporations. ~~under the limited liability company's governing law if the limited liability company dissolved as of the last day of the member corporation's taxable year.~~

(c) Other Companies. – In all other cases, none of the limited liability company's income, assets, liabilities, or equity is attributed to a ~~member~~ principal corporation under this Article. ~~A limited liability company's governing law is determined under G.S. 57C-6-05 or G.S. 57C-7-01, as applicable. The definitions in section 1504 of the Code apply in this subsection.~~

(d) Penalty. – A taxpayer who, because of fraud with intent to evade tax, underpays the tax under this Article on assets attributable to it under this ~~subsection~~ section is guilty of a Class H felony in accordance with G.S. 105-236(7)."

SECTION 9.3.(c) This section becomes effective January 1, 2003, and applies to taxes due on or after that date.

PART X. HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

SECTION 10. Section 10.(f) of S.L. 2000-56 reads as rewritten:

"**SECTION 10.(f)** Low-Income Housing Credit Changes. – G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, ~~2001,~~2000, and expires January 1, 2005."

PART XI. SEVERABILITY CLAUSE AND EFFECTIVE DATE

SECTION 11.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 11.2. Except as otherwise provided, this act is effective when it becomes law. Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under those statutes for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate or individual income tax to the extent the underpayment was created or increased by this act.

Senate Bill 1292 (PCS): Budget Revenue Act of 2002

BILL ANALYSIS

Committee: House Finance
Date: July 24, 2002
Version: Draft

Introduced by: Senators Kerr and Hoyle
Summary by: Finance Team

SUMMARY: The proposed House Committee Substitute for Senate Bill 1292 contains the following tax changes:

- *PART I accelerates the 2001 legislation establishing a sales tax swap, as follows:*
  - *Accelerates the effective date of the local option sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the sunset of the State's half-cent sales tax from July 1, 2003, to January 1, 2003.*
  - *Accelerates the repeal of the tax reimbursements, from July 1, 2003, to July 1, 2002.*
  - *Does not accelerate the hold harmless for local governments beginning in the 2003-2004 fiscal year, but provides a partial payment in 2002-2003 to those local governments with the greatest loss. Also sunsets the hold harmless provision in 2012.*
  - *Accelerates the change from quarterly sales tax distributions to monthly sales tax distributions, from July 1, 2003, to October 1, 2002.*
- *PART II delays the income tax breaks enacted in 2001. This Part is identical to the Senate version.*
  - *The phase-in of the increase in the standard deduction for married taxpayers is delayed until January 1, 2003.*
  - *The phase-in of the additional child tax credit amount is delayed until January 1, 2003.*
- *PART III conforms North Carolina's tax laws to many of the federal tax law changes enacted in 2001 and 2002, and to the gift tax annual exclusion. Except for the gift tax change and a reduction in the bonus depreciation add-back, this Part is identical to the Senate version.*
  - *Conform to the educational provisions in EGTRRA.*
  - *Conform to the pension tax provisions in EGTRRA.*
  - *Conform to the net operating loss provisions in EGTRRA.*
  - *Conform to the miscellaneous provisions in EGTRRA and in the Job Creation and Worker Assistance Act of 2002.*
  - *Conform to the increased estate tax limits in EGTRRA.*
  - *The bill does NOT conform to either the phase-out of the State estate death tax credit in EGTRRA or the accelerated depreciation provisions in the Job Creation and Worker Assistance Act of 2002.*

- *PART IV provides that local governments will bear a portion of the costs associated with the collection of the drug tax. These costs are currently borne entirely by the General Fund. Except for a correction to the effective date, this Part is identical to the Senate version.*
- *PART V sets the insurance regulatory fee at 6.5% for the 2002 calendar year. This rate is the same as the 2001 rate. This Part is identical to the Senate version.*
- *PART VI sets the public utility regulatory fee at 0.1% for the 2002-2003 fiscal year. It also sets the electric membership corporation regulatory fee at $200,000 for the 2002-03 fiscal year. These rates are the same as the rates established last year. This Part is identical to the Senate version.*
- *PART VII is reserved.*
- *PART VIII seeks to secure local revenues in two ways, listed below. This Part is identical to House Bill 1490 as it passed the House. It is similar to the corresponding provision in the Senate version.*[1]
    - *It prohibits the Governor from withholding certain shared tax revenues by classifying them as "local revenues" rather than "State expenditures" thus arguably removing those funds from the scope of the Governor's constitutional budgetary authority.*
    - *It restricts the Governor's ability to withhold funds otherwise appropriated or committed to local governments, including reimbursement money, by requiring that the Governor first exhaust all other sources of revenue, including surplus in the treasury at the beginning of the fiscal period, and be authorized to withhold the funds by an act of the General Assembly.*
- *PART IX closes three corporate tax loopholes, as described below. There is no corresponding provision in the Senate version.*
    - *Broadens the definition of "business income" to include all income that states can apportion for corporate income tax purposes under the U.S. Constitution, effective beginning with the 2002 tax year.*
    - *Provides that sales that no state or country has the right to tax are "thrown out" of the calculation of profits to apportioned among the states, thereby increasing the percentage apportioned to North Carolina for the purpose of corporate income taxation, effective beginning with the 2002 tax year.*
    - *Tightens the 2001 legislation that was intended to close a loophole that allows corporations to escape franchise tax by transferring assets to a controlled limited liability company, effective beginning with payments due in March 2003.*
- *PART X enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. There is no corresponding provision in the Senate version.*

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[1] The Senate version lacks the conforming change to the electric cities statute, and lacks the extra requirement that the Governor needs General Assembly authorization before releasing any funds committed to local governments.

PART I: ACCELERATE SALES TAX SWAP

State and Local Sales Tax Changes.

Part I of this bill accelerates many of the provisions enacted last session and modifies others. The 2001 legislation authorized counties to levy additional local sales taxes of ½%, effective July 1, 2003. Under this bill, the tax may become effective as early as January 1, 2003. The 2001 legislation imposed an additional State ½% sales tax that was set to expire July 1, 2003. The bill would sunset this State tax January 1, 2003. Thus, the combined State and local rate would never exceed 6 ½%. To accomplish the sales tax acceleration, the bill provides for the following:

- It would allow the counties to enact the tax in the first 6 months of 2003 with a shortened notice to the Department of Revenue.
- It would allow counties and cities to amend their budget ordinances after July 1st to reduce their property tax levy to account for unanticipated revenues.
- It would authorize the Department of Revenue to withhold up to $275,000 for 2002-2003 to cover its excess nonrecurring costs for implementing the new sales tax on short notice.
- It would exempt the Department of Revenue from the public contract bidding requirements for the procurement of supplies, materials, equipment, and contractual services related to the provision of notice and the development of computer software necessitated by the expedited provisions of the bill.

Under general law, a county must give the Secretary of Revenue at least 90 days advance notice of a new tax levy or tax rate change; and a new tax levy or a tax rate change may become effective only on January 1 or July 1. This bill provides for an expedited levy. If the county enacts the tax effective to become effective in the first half of the 2003 calendar year, the tax may become effective on the first day of any month from January through July and the county must give the Secretary only 30 days advance notice of the tax levy. Thereafter, the current law requirements of 90 days notice and a January 1 or July 1 effective date are reinstated.

Under current law, counties are authorized to levy up to 2% local sales and use taxes[2]. All counties levy the maximum rate. The State collects the tax and distributes it quarterly to the counties and municipalities. In 2001, the General Assembly provided that local sales taxes must be distributed monthly rather than quarterly, effective July 1, 2003. This bill accelerates the effective date of the monthly distribution schedule to October 1, 2002.

Local Government Reimbursements.

In 2001, the General Assembly repealed all of the State's reimbursement payments to local governments, effective beginning with the 2003-2004 fiscal year. This bill would accelerate the repeal, effective July 1, 2002.

The 2001 legislation would have provided local governments "hold harmless" payments beginning in 2003-2004 if the amount they could potentially realize from the levy of the

[2] Mecklenburg County is authorized to levy up to 2 ½% local sales and use taxes.

half-cent sales tax was less than the amount they would lose from the reimbursements. This bill does not accelerate the hold harmless provision, so it will not be in effect for the 2002-2003 fiscal year. It does, however, provide a one-time payment in 2002 for those local governments that would lose the most revenue from the swap in 2002-2003. If a local government's loss from the repeal of the reimbursements exceeds three times its potential proceeds from the new tax, the Department of Revenue will pay the excess to the local government.

The full, annual hold harmless payments will begin September 15, 2003, under the provision enacted in the 2001 legislation. This bill sunsets these hold harmless payments after the September 15, 2011 payment. The Department of Revenue will make these hold harmless distribution annually, drawing the funds from State sales tax collections.

State reimbursements are amounts distributed to local units to compensate them for revenue lost as a result of the removal by the General Assembly of property from the local sales and use tax base, the local property tax base, or the intangibles tax base. State reimbursements consist of reimbursements for the repeal of the property tax on inventories and on poultry and livestock, the repeal of the intangibles tax, the "homestead exclusion" from property tax, and the repeal of local sales and use taxes on food purchased with food stamps.

This bill does not repeal or reduce the distribution of local government tax-sharing revenues: excise tax on beer and wine, franchise tax on electricity, gross receipts tax on piped natural gas, sales tax on telecommunications service, and the Powell bill revenues.

PART II: DELAY 2001 TAX BREAKS

Last session, the General Assembly enacted two income tax breaks to become effective for 2002 tax year[3]: elimination of the marriage tax penalty[4] and an increased tax credit for children. Part II of this bill delays the enactment of these tax benefits.

Last session, the General Assembly reduced North Carolina income taxes on married couples that claim the standard deduction[5] by increasing the amount of the standard deduction for married filers so that it would be twice that of a single taxpayer. Since 1989, the basic standard deduction for a single person in North Carolina has been $3,000 while that for a married couple filing jointly has been $5,000. The increase in the deduction enacted in 2001 is phased in over the 2002 and 2003 tax years. The standard deduction for married persons filing separately is one-half that for a married couple filing jointly, so the 2001 act also phased it up from $2,500 to

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[3] S.L. 2001-424, as amended by S.L. 2001-476, 2001-497, and 2001-489.

[4] The so-called married tax penalty is the result of a tax system that recognizes that a married couple's living expenses are less than the expenses of two single people living separately but more than the expenses of one single person. In addition, if one spouse is not employed full-time, a married couple's income would be less than that of two comparable single people who work full-time, but more than that of one single person. The tax law addresses these situations through the tax brackets, the personal exemptions, and the standard deduction. The result of these tax provisions is that a married couple with only one spouse working experiences a tax reduction when they marry, a married couple where one spouse earns substantially more than the other experiences no tax reduction or increase when they marry, and a married couple with both spouses earning roughly the same amount experience a tax increase when they marry.

[5] Roughly 70% of North Carolina taxpayers claim the standard deduction.

$3,000 over the 2002 and 2003 tax years. Part II of this bill would delay by one year the phase-in of the increased deduction, so that it would occur over the 2003 and 2004 tax years.

In 2001, the General Assembly increased the $60 tax credit per child to $75 for the 2002 tax year and to $100 for the 2003 tax year. Part II of this bill would delay the phase-in of the credit increase until the 2003 and 2004 tax years. The 1995 General Assembly enacted the tax credit of $60 per child for taxpayers who have dependent children and have family adjusted gross income below $100,000 for a married couple and $80,000 for a head of household. Neither the 2001 act nor this bill changes the income thresholds. The credit is in addition to the federal and state tax credits or exclusions for child care expenses. The credit is allowed for each dependent child for whom the eligible taxpayer could take a federal personal exemption under section 151(c)(1)(B) of the Internal Revenue Code. That Code section allows an exemption for each dependent child who either is less than 19 years old at the end of the taxable year or is a student and is less than 24 years old at the end of the taxable year. A child is a son, stepson, daughter, or stepdaughter. A dependent child is a child over half of whose support was provided by the taxpayer.

PART III: UPDATE IRC REFERENCE

North Carolina's tax law tracks many provisions of the federal Internal Revenue Code, by reference to the Code.[6] The General Assembly determines each year whether to update its reference to the Internal Revenue Code.[7] Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State law previously tracked federal law. The General Assembly's decision whether to conform to federal changes is based on the fiscal, practical, and policy implications of the federal changes and is normally enacted in the following year, rather than in the same year the federal changes are made.

Congress enacted two bills that have changed the Code significantly since January 1, 2001:

- The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), enacted on June 7, 2001, includes numerous changes to the taxation of pension benefits, accounts, distributions, and rollovers; of education initiatives; and of estates. All of the provisions of EGTRRA will expire on December 31, 2010, unless the provisions are renewed or modified by Congressional action.[8]
- The federal Job Creation and Worker Assistance Act of 2002, enacted March 9, 2002, includes an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 10, 2001, and before September 11, 2004, and an extension of the

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[6] North Carolina first began referencing the Internal Revenue Code in 1967, the year it changed its taxation of corporate income to a percentage of federal taxable income.

[7] The North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power."

[8] The Congressional Budget Act of 1974 mandates this sunset provision.

carryback period for net operating losses occurring in tax years ending in 2001 and 2002 from two years to five years.

Both of these acts will substantially affect a taxpayer's federal taxable income. Since North Carolina begins its corporate and individual income tax calculations with federal taxable income, these acts also have a substantial impact on North Carolina's tax revenues to the extent the State chooses to conform to those changes.

Part III of this bill rewrites the definition of the Code to change the reference date from January 1, 2001, to May 1, 2002. It then provides that a taxpayer must add to federal taxable income the amount allowed as an accelerated depreciation deduction under section 168(k) or 1400L of the Code and that a taxpayer's estate tax liability is determined without regard to the phase-out of the state death tax credit. In effect, Part III would do the following:

- Conform to all of the pension tax changes in the Code.
- Conform to all of the education initiatives in the Code.
- Conform to the increased estate tax exemption limitations.
- Not conform to the phase-out of the state death tax credit.
- Conform to the extension of the carryback period for net operating losses occurring in tax years ending in 2001 and 2002.
- Delay the accelerated 30% bonus depreciation allowance.

Pension Tax Provisions: This Part conforms North Carolina's tax treatment of pension benefits and distributions to federal law. Some of the more notable changes EGTRRA made to the pension laws include:

- It allows taxpayers to contribute more to their tax-deferred retirement accounts. It gradually increases the amount that may be contributed to a 401(k), 403(b), and 457 accounts between 2002 and 2006. The contribution limit will increase to $15,000 in 2006. Starting in 2007, the limit will be indexed for inflation in $500 increments. It also allows persons who are 50 or older to make an additional catch-up contribution to their tax-deferred retirement accounts.
- It increases the amounts that may be contributed to both traditional IRAs and Roth IRAs from $2,000 in 2001 to $3,000 in 2002. This amount gradually increases to $5,000 for 2008. After 2008, this amount will be indexed annually for inflation. It also allows people over the age of 50 to make catch-up contributions to an IRA.
- It modifies the distribution rules for governmental 457 plan participants so that their deferred compensation funds will be taxed when they receive the distribution, not when it is made available to them.
- It repeals the coordination of deferrals between 457 and other elective deferral plans. Under former law, the maximum deferral amount for a 457 plan was reduced dollar for dollar by any contribution made to other types of retirement plans. The tax law change means that a person may defer the maximum annual contribution limit to a 457 plan as well as the maximum amount in a 401(k) or 403(b) plan.
- It expands the types of eligible tax-free rollover distributions to include distributions from qualified plans, 403(b) annuities, and 457 plans to other such plans and distributions from IRAs to qualified plans, 403(b) annuities, and 457 plans.

- It allows a surviving spouse to roll over distributions from a deceased spouse's plan to his or her own plan. Prior to this change, the tax-free rollover had to be made to an IRA.

Education Tax Provisions: This Part conforms North Carolina tax law on education incentives to the federal changes enacted last year. The more notable tax changes affecting education incentives include:

- It increases the annual maximum contribution limit to an education IRA from $500 to $2,000 per beneficiary.
- It allows education IRAs dollars to be used to cover expenses of students in grade, middle, and high schools.
- It eases the restrictions and limitations when using an Education IRA with other education initiatives, such as the Hope or Lifetime Learning tax credit.
- It moves the annual contribution deadline for Education IRAs from December 31 to April 15 of the following year.
- It provides that distributions from Section 529 Plans will be income-tax free up to the amount that is used to pay qualified higher education expenses.[9] Under former law, participants enjoyed only the benefit of tax-deferred contributions and investment growth.
- It allows a person to transfer 529 plan credits from one program to another for the benefit of the same beneficiary without incurring a taxable event.
- It extends the deduction for employer-paid college expenses to include graduate courses.

Estate Tax Provisions: North Carolina repealed its inheritance tax in 1998, effective for deaths occurring on or after January 1, 1999. It replaced its inheritance tax with an estate tax that is equivalent to the federal state death tax credit allowed on a federal estate tax return. This type of state estate tax is known as a "pick-up" tax because it picks up for the state the amount of federal estate tax that would otherwise be paid to the federal government.[10] EGTRRA made two changes that affect the estate tax:

- It phases out the estate tax over the next eight years by increasing the exclusion amount from $675,000 in 2001 to $1 million in 2002-03, $1.5 million in 2004-05, $2 million in 2006-08, and $3.5 million in 2009. There is no need for an exemption amount after 2009 since the tax is repealed in 2010. However, the tax is scheduled to reapply in 2011 unless a future Congress makes the repeal permanent. If the tax were reinstated in 2011, the exclusion amount would be $1 million. **This bill would conform North Carolina's exemption limits to the federal exemption limits to ensure that estates in North Carolina do not have to pay State tax if there is no federal tax due.**
- It phases out the state death tax credit over the next four years by reducing it 25% in 2002, 50% in 2003, and 75% in 2004, and repealing it entirely in 2005. **This bill does NOT conform to the phase out of the state death tax credit for two years.**[11] Therefore, under

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[9] North Carolina currently allows tax free distributions for North Carolina plans. Section 3.5 of the bill repeals the State deduction.

[10] As of July 1, 2001, 36 other states, plus the District of Columbia, impose only the "pick-up tax".

[11] As of July 3, 2002 the following states have acted to decouple from the phase-out of the state death tax credit for some period of time or have introduced legislation to that effect: Connecticut, Illinois, Maine, Maryland,

this bill an estate of a decedent dying on or after January 1, 2002, and before January 1, 2004, would owe North Carolina estate tax to the same extent that it would be owed without regard to the phase-out of the credit. The January 1, 2004, sunset ensures that the State will have to revisit this issue next year.

Because North Carolina's estate tax is based upon the federal credit for state death taxes, the repeal of the state death tax credit in 2005 and the ultimate repeal of the federal estate tax in 2010 will mean that the State must decide whether to replace or repeal its estate tax in the future.

Accelerated Depreciation Provisions: Under the Job Creation and Worker Assistance Act of 2002, a taxpayer is allowed an accelerated 30% bonus depreciation allowance for certain assets placed in service after September 11, 2001, and before September 11, 2004. The taxpayer is still entitled to the normal first-year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation. This provision affects both corporate and individual income taxpayers.

The change in federal law results in a taxpayer recovering the basis in the asset sooner than under former law; however, over the life of the asset the taxpayer still receives the same benefit. This bill does not conform State law to the accelerated depreciation schedule allowed under federal law. [12] However, under this bill a taxpayer will continue to be able to deduct the same amount of an asset's basis under both federal and State law; it is just that the timing of the deduction will differ. To accomplish this decoupling from the federal accelerated bonus depreciation, the bill does two things:

- For the first three years of the federal accelerated depreciation, it provides that a taxpayer must add back to federal taxable income a percentage of the additional 30% accelerated depreciation in the year the accelerated depreciation is claimed for federal purposes.[13] The percentage is 100% for the 2001 and 2002 taxable years and 80% for the 2003 taxable year. There is no add-back for the 2004 taxable year. The add-back for the first three years of the accelerated depreciation means that for State tax purposes, a taxpayer would deduct less in tax years 2001-2003 than the taxpayer would have deducted if the State conformed to the accelerated depreciation law. The amount of the deduction will be the

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Minnesota, Nebraska, New Jersey, Pennsylvania, Rhode Island, Vermont, and Wisconsin. The following states will remain decoupled unless they take legislative action: Arkansas, District of Columbia, Kansas, New York, Oklahoma, Oregon, Virginia and Washington. (Source: Center on Budget and Policy Priorities)

[12] As of July 3, 2002, the following 22 states have decoupled from a portion of the accelerated depreciation allowance as the result of explicit legislative action following enactment of the federal law or have introduced legislation to that effect: Arizona, Connecticut, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Minnesota, Mississippi, Missouri (for one year), Nebraska, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont (for corporate income tax filers only), Virginia, and Wisconsin. In addition, New York City has decoupled from the bonus depreciation allowance. Six other states are decoupled automatically under pre-existing tax law: Arkansas, Idaho, Kentucky, New Hampshire, South Dakota, and Texas. (Source: Center on Budget and Policy Priorities; Tax Analysts)

[13] For tax years beginning before January 1, 2002, the add-back must be taken in the first taxable year beginning on or after January 1, 2002, so that the taxpayer will not recognize any retroactive tax increase.

normal first year depreciation on the remaining basis of the asset after reducing the basis by the bonus depreciation amount allowed under federal law plus 30% of the bonus deprecation in 2003. In 2004, the State will have in effect conformed to the federal law and the entire bonus depreciation may be deducted.

- In tax years beginning on or after January 1, 2005, it provides that the taxpayer may deduct from federal taxable income the total amount of the add-backs required in earlier years, divided into five equal installments. This means that for State tax purposes, a taxpayer would be allowed to deduct a greater depreciation amount in the outlying tax years - the normal depreciation amount plus 20% of the accelerated depreciation amount the taxpayer had to add back. The purpose of this recovery provision is to enable the taxpayer to have the same basis in assets for federal and State purposes. Without this deduction provision, a taxpayer would have a different basis in the depreciable asset for State and federal purposes and would have to keep separate books and records for State and federal purposes until the disposal of the asset. In effect, the add-back and subsequent deduction will affect the timing of the impact of bonus depreciation on the State but it will not increase or decrease the total amount of revenue the State receives over the affected years.

Gift Tax Change: North Carolina imposes a gift tax on property transferred during the life of a donor. Gifts to a spouse are exempt from tax. The gift tax law allows an annual exclusion of $10,000.

The federal gift tax annual exclusion is more complex. Since 1998, the $10,000 federal gift tax annual exclusion has been subject to an inflation adjustment. The adjustment happens only in increments of $1,000 however. From 1998 until 2001, inflation had not grown enough to reach the first $1,000 increment. In 2002, that threshold was reached and the federal annual exclusion increased to $11,000. This amount won't increase to $12,000 until the cumulative inflation adjustment is at least 20%.

Section 3.7 of the bill amends North Carolina's gift tax annual exclusion to piggyback the federal amount, effective January 1, 2002.

PART IV. UNAUTHORIZED SUBSTANCE TAX EXPENSES

Part IV of this bill would allocate to local governments 70% of the State's expenses in collecting the unauthorized substance tax. The expenses would be drawn from local sales tax revenues. Under current law, the following expenses are deducted from local sales tax distributions: costs of the Property Tax Division, costs of the Property Tax Commission, the costs of the Institute of Government in operating a training program in property tax appraisal and assessment, and the costs of the Local Government Commission.

The General Assembly first imposed the unauthorized substances tax in 1989 to generate revenue for State and local law enforcement agencies and for the General Fund. Seventy-five percent of the tax collected is distributed to the State or local law enforcement agency that

conducted the investigation that led to the tax assessment. The remaining 25% is credited to the General Fund. This bill does not change this revenue allocation.

PART V. INSURANCE REGULATORY CHARGE

Part V of this bill sets the insurance regulatory charge at the same rate as last year's rate: 6.5% for the 2002 calendar year. The insurance regulatory charge is a tax that was enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's premiums tax liability. The insurance regulatory charge is imposed on insurance companies, health maintenance organizations, and medical service corporations. For health maintenance organizations and medical service corporations, the fee is levied on each company's hypothetical gross premiums tax liability determined at the 1.9% gross premiums tax rate applied to its premiums base. The hypothetical calculation is necessary because medical service corporations and health maintenance organizations do not pay premiums tax at that rate.

PART VI. REGULATORY FEE FOR UTILITIES COMMISSION

Part VI of the bill sets the tax rate for the public utility regulatory fee for the 2002-2003 tax year at the same rate as last year's rate: 0.1%. This rate must be set by the General Assembly each year. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund is currently used to finance the work of the Study Commission on the Future of Electric Service in North Carolina. The General Assembly established the Commission in 1997 to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and economical, fair, and equitable rates for all consumers of electricity in North Carolina. Section 14.10 of SL 2000-67, the Current Operations and Capital Improvements Appropriations Act of 2000, extended the life of the Study Commission and its funding from the Utilities Commission and Public Staff Fund through June 30, 2006.

Part VI also sets at $200,000 for the 2002-2003 fiscal year the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. This is the same rate that was in effect for the 2001-2002 fiscal year. The North Carolina Electric Membership Corporation is the only electric membership corporation that fits this description. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations.

The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation. The General Assembly must establish the fee amount each year. The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale, as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives." Thus, the fee imposed on the North Carolina Electric Membership Corporation will be passed on to its member electric membership corporations.

PART VII: [RESERVED]

PART VIII: SECURE LOCAL REVENUES

Sections 8.1 through 8.6 of the bill amend the following tax-sharing statutes by characterizing the revenue distributed by those statutes as distributions of "local revenue" rather than "State expenditures" for purposes of interpreting Section 5(3) of Article III of the North Carolina Constitution:

- Section 8.1 - Beer and wine tax.
- Section 8.2 - Franchise gross receipts tax.
- Section 8.3 - Piped natural gas tax.
- Section 8.4 - Sales tax on telecommunications.
- Section 8.5 - Powell Bill funds.
- Section 8.6 - Electric cities distribution

Arguably, since the Constitution authorizes the Governor to reduce only "State expenditures," the classification of these state-shared tax revenues as "local revenues" prohibits the Governor from reducing or withholding the distributions. Moreover, the bill expressly states that the Governor may not reduce or withhold these distributions.

Section 8.7 of the bill amends the Executive Budget Act by limiting the Governor's authority to withhold from distribution funds that the General Assembly has appropriated or otherwise committed to local governments, including local reimbursement money. The Governor may withhold these funds only if, after making adequate provision for the prompt payment of principal of and interest on bonds and notes of the State, the Governor has exhausted all other sources of revenue of the State including surplus remaining in the treasury at the beginning of the fiscal period. In addition, the Governor must have been authorized to withhold the funds by an act of the General Assembly.

Based on the current information available, including a recent Attorney General's opinion, it is unclear whether amending the above-referenced statutes would be effective in preventing the Governor from withholding these funds from local governments. If the Governor withheld the funds despite the enactment of this legislation, enforcement of this limitation on the Governor's authority may have to be resolved by a court. The surest way to secure local revenues would be to pass a constitutional amendment prohibiting the Governor from withholding these funds.

PART IX: CLOSE CORPORATE TAX LOOPHOLES

This Part closes three corporate tax loopholes that allow some corporate profits to escape taxation and give corporate tax planners an opportunity to avoid existing taxes on corporate income and assets. The first loophole is caused by the definition of business income used in the corporate income tax law; the second loophole is caused by the treatment of certain sales in the formula for apportioning business income to the State for corporate income tax purposes; and the third loophole is caused by the different franchise tax treatment of corporations and limited liability companies.

Definition of Business Income: Section 9.1 of this Part amends the definition of "business income" to include all income that is apportionable under the U.S. Constitution, effective for taxable years beginning on or after January 1, 2002.

Corporations that do business in more than one state divide up their income among those states for income-tax purposes. Business income is apportioned based on a formula that takes into account how much sales, property, and payroll the corporation has in each state. Nonbusiness income is allocated to a state based on its connection with that state. In the most basic terms, nonbusiness income could be described as income that is earned in an unrelated sideline activity of the corporation.

As an analogy, each interstate corporation's income is in two "pies" - a business income pie that is divided up among the states in which it does business, and a nonbusiness income pie that is given entirely to the state it is connected to.

In an ideal system, all states would follow the same rules for dividing up interstate corporations' income for tax purposes, so that no more and no less than 100% of every corporation's net income would be subjected to state income tax. However, different states have different laws and even when the laws are the same, they may be interpreted differently. In theory, this can result in the taxation of more than 100%, as well as less than 100%, of a corporation's net income. In practice, corporate tax planners take the opportunity to create "nowhere" income - income that no state can tax. Instead of each state receiving its piece of the business income pie, some pieces are thrown away. Thus, although a corporation may do substantial business in North Carolina, much of its otherwise taxable business income may be characterized as nonbusiness, so that North Carolina gets no piece of it.

These tax avoidance schemes are possible not only because different states have different laws, but also because states such as North Carolina have laws that are vague or too narrow. In North

Carolina, income is business income if it relates to the regular trade or business of the taxpayer. This definition is vague and narrower than what is allowed under the United States Constitution. If North Carolina is entitled to tax a significant percentage of a corporation's business income, the corporation may try to shift much of its income into the nonbusiness pie, which North Carolina does not share in. This may be true even though the corporation has deducted as a business expense the same items that it now claims are not business items when the time comes to pay tax on profits. Recent court decisions in North Carolina have upheld this tax avoidance technique. Examples of the types of business income that corporations most often recharacterize are rents, royalties, gain or loss from the sale of property, interest, and dividends.

This proposal would change the definition of business income to include any income that the United States Constitution allows a state to treat as business income. This eliminates the current statute's vagueness and narrowness, which allow it to be used by corporations to create "nowhere" income that should otherwise be taxable in North Carolina. One effect of this change will be to include income from extraordinary events, such as a liquidation of a division, in apportionable income, consistent with the Department of Revenue's historical position, as illustrated by its administrative rules, before the North Carolina Supreme Court's decision in *Lenox v. Tolson.* A corporation's income earned out of state from unrelated business activity that makes up a discrete business enterprise would continue to be nonbusiness income that cannot be apportioned – it would continue to be allocated to the state to which it is connected.[14]

26 states including North Carolina use the vague, unnecessarily narrow definition of business income.

18 states have a broader definition of business income:

- 5 states have the law proposed in Section 9.1 of the bill (define business income as all that the U.S. Constitution allows state to apportion):
    1. Florida
    2. Iowa
    3. Minnesota
    4. Pennsylvania
    5. Texas
- 13 states apportion all corporate income. These states' approach would gain less revenue than the proposal in Section 9.1 because it would relinquish the right to tax true nonbusiness income of North Carolina-headquartered businesses. The 13 states include:
    1. Georgia
    2. South Carolina
    3. Virginia

In 1996, an economist with the Federal Reserve Bank of Boston published a study of the effect of state tax policy on economic development. The study looked at various manufacturing

[14] Several examples of the effect of this proposal are at the end of this summary.

industries in 22 states - including most major manufacturing states - and found no statistically significant correlation between business tax burdens and the location of new investment.

Throw-out Rule for Corporate Apportionment: Section 9.2 of Part IX would exclude certain out-of-state sales of tangible personal property from the base of the sales factor used to apportion business income to North Carolina, effective beginning with the 2002 tax year.

Like the previous provision, this proposal would bring under North Carolina's corporate income tax a part of a corporation's "nowhere" income that is currently not being taxed by any state. Under current law, the formula for determining how much of the business income pie goes to North Carolina focuses on sales, payroll, and property in North Carolina. The sales factor is a ratio of sales in North Carolina to all sales everywhere. Sales of tangible personal property are considered to be "in" the state[15] where the purchaser receives the item. Under the sales factor formula, the more sales a corporation has that are not in North Carolina, the smaller the sales factor used to calculate North Carolina's piece of the business income pie - because the formula assumes those sales will go into another state's piece of the business income pie.

But some sales of tangible personal property don't go into any state's piece of the pie. That may be because they are made in a state that cannot tax the corporation or because they are made to the federal government and so one cannot tell which state they are made in. Without the throw-out rule (or a similar rule called the throw-back rule), 50% to 100% of the profits of a state's corporations may be "no where" income, according to a 2002 article published by Michael Mazerov of the Center on Budget and Policy Priorities.

Under Section 9.2 of the bill, "nowhere" sales (sales of tangible personal property where the purchaser is the federal government or is located in a state or country that cannot tax the corporation) are excluded from the sales factor formula so that they do not reduce the ratio that determines how much of a corporation's business income North Carolina can tax. Thus, if another state cannot consider the sales in calculating its piece of the pie, the sales will not escape tax entirely - instead, there will be an increase in North Carolina's piece of the pie. If every state adopted the throw-out rule, then 100% of a corporation's interstate income would be taxed - there would be no "nowhere" income.

Here is an example of the throw-out rule. Corporation X has 20% of its sales in North Carolina, 20% of its sales in Virginia, and 60% of its sales in Tennessee. The corporation has no nexus with Virginia so Virginia cannot tax its income. Tennessee, like North Carolina current law, has no throw-out or throwback rule. Under current law, the sales factor for North Carolina would be 20% divided by 100%, or 1/5. The sales factor for Tennessee would be 60% divided by 100%, or 3/5. There is no sales factor for Virginia. Thus, the sales factors for North Carolina and Tennessee add up to only 4/5 of the company's sales. As a result, less than 100% of the company's business income will be apportioned to those states for taxation. If North Carolina adopted the throw-out rule, the 20% of sales to Virginia are subtracted from the denominator of

[15] Under North Carolina's law for apportioning income, the term "state" includes other countries.

the sales factor. Thus, North Carolina's sales factor would be 20% divided by 80%, or 1/4. Because 1/4 is more than 1/5, a larger proportion of the corporation's income would be allocated to North Carolina. If Tennessee also adopted the throw-out rule, its sales factor would be 60% divided by 80%, or 3/4. Thus, the sales factors for the two states would add up to 100% and all of the corporation's sales would be considered in apportioning its business income between the two states.

The throw-out rule and its sibling, the throwback rule, are not new. They predate the 1959 federal law limiting a state's ability to impose corporate income tax on corporations whose only connection with the state is soliciting orders there. The following information on states that do and do not have the throw-out rule or the throwback rule comes from Michael Mazerov of the Center on Budget and Policy Priorities. After the name of each state is listed the percent increase or decrease of manufacturing jobs in that state during the period 1995-2000. For that period, NC's manufacturing jobs decreased 9.5%.

21 States, including North Carolina, do NOT have a throw-out or throwback rule. These states include:

State	Job Loss or Gain
• Florida	0.0%
• Georgia	+0.1%
• South Carolina	-8.0%
• Tennessee	-5.7%
• Virginia	-3.5%

The following 25 States HAVE the throw-out or throwback rule. [16] (The underlined states have the throw-out rule.)

State	Job Loss or Gain
• Alabama	-7.9%
• Alaska	-18.3%
• Arkansas	-3.1%
• California	+8.4%
• Colorado	+6.7%
• Hawaii	+1.2%
• Idaho	+8.2%
• Illinois	-1.8%
• Indiana	+0.6%
• Kansas	+9.8%
• Maine	-6.5%

[16] Washington, D.C. also has the throwback rule, bringing the total to 26. In addition, Massachusetts technically has the throwback rule but Mazerov points out that its rule is full of loopholes so that it is not effective.

- Mississippi -9.3%
- Missouri -4.1%
- Montana +6.0%
- New Hampshire +3.0%
- New Jersey[17] -7.4%
- New Mexico -5.1%
- North Dakota +17.4%
- Oklahoma +6.7%
- Oregon +6.0%
- Texas +5.2%
- Utah +5.6%
- Vermont +8.4%
- West Virginia -2.1%
- Wisconsin +2.5%

According to Mazerov, this information shows that states with the throw-out and throwback rules (and the royalty loophole closing North Carolina enacted last year) are disproportionately represented among states with net manufacturing gains.

LLC Franchise Tax: In 2001, the General Assembly enacted S.L. 2001-327 to close a loophole that allowed corporations to avoid franchise tax on their assets by transferring their assets to a controlled limited liability company (LLC). Corporations pay franchise tax on their assets but LLCs do not pay franchise tax on their assets. Tax planners helped many corporations avoid most of the franchise tax they would otherwise owe by setting up an LLC for the purpose of holding the assets on behalf of the corporation. Although the corporation's business continued in the same way, the corporation eliminated most of its franchise tax through this paper transaction.

The 2001 legislation tried to address this problem by requiring a corporation to pay tax on assets owned by the LLC if the corporation, including its affiliated corporations, indirectly owned[18] at least 70% of the LLC's assets. Unfortunately, tax planners found that the tax could still be avoided by using an additional paper transaction. If the corporation interposed a partnership between itself and the LLC holding its assets, then technically the 2001 legislation would not apply and the assets would continue to escape franchise tax.

Section 9.3 of this Part broadens the approach of the 2001 legislation to include "related members" (other entities and individuals) who may partner with one or more corporate entities to own the LLC to which the corporate assets are transferred. This section would become effective beginning with payments due in March 2003. "Related members" is a term defined in

[17] New Jersey just enacted the throwback rule in 2002.

[18] Indirect ownership of an LLC's assets is determined based on who is entitled to receive those assets upon dissolution of the LLC.

the "trademark royalties" provision of last year's loophole bill and includes shareholders, partnerships, etc.

If a corporation and its related members together indirectly own at least 70% of an LLC's assets, this Part provides that each corporation pays franchise tax on its relative share of the LLC's assets. The relative share is calculated after excluding those related members who are not corporations. Thus, the entire assets are subject to franchise tax, with the tax burden shared proportionally by the corporations that are involved in the ownership scheme. The language of the bill accomplishes this by stating that the following percentage of the LLC's assets are taxable to the corporation: "The attributable percentage is equal to the percentage of the limited liability company's assets owned indirectly by the principal corporation divided by the percentage of the limited liability company's assets owned indirectly by related members of the principal corporation that are corporations."

Here is an example:

A parent corporation, its subsidiary, and a major shareholder of the parent form a partnership to own an LLC that will own assets on behalf of the parent and subsidiary. The LLC's documents provide that upon dissolution its assets are distributed as follows:

- Parent Corporation: 20%
- Subsidiary Corporation: 45%
- Shareholder: 35%

Under current law, the assets would remain free of franchise tax. If this Part were enacted, the parent corporation would pay franchise tax on 31% of the assets and the subsidiary corporation would pay franchise tax on 69% of the assets. Those are their relative shares of the total once you exclude the non-corporate owner.

The approach taken by this Part is much broader than the 2001 legislation and is intended to anticipate the creative paper relationships tax planners may devise to try and avoid the franchise tax. The breadth of the provision is such that it could apply to a "legitimate" situation, such as an individual who is the sole shareholder of a corporation and who later forms an LLC with an associate. Under this proposal, the corporation would pay tax on the LLC's assets. Unfortunately, there does not appear to be a way to distinguish this type of situation from one in which the corporation is manipulating relationships to avoid its franchise tax. With different tax treatment of similar entities, tax planners can try to manipulate relationships to fall into the untaxed category. Because corporations and LLCs are similar, there may not be a strong policy reason to treat them differently for franchise tax purposes.

PART X: HOUSING TAX CREDIT EFFECTIVE DATE CHANGE

Part X of this bill enlarges the class of taxpayers eligible for an enhanced credit for investing in low-income housing in a county that sustained severe or moderate damage from a hurricane in 1999. In 1999, the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal

credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two counties and 25% for buildings located in other tiers. In 2000, the General Assembly enacted legislation providing that the 75% credit is also allowed for buildings located in one of 26 counties that sustained severe or moderate damage from a hurricane in 1999. This increase in the amount of the credit was made effective for buildings that are allocated a federal credit on or after January 1, 2001. The federal tax credits are allocated in December of each year. Thus, those taxpayers who made investments in hurricane counties and were allocated federal credits in December 2000 are not eligible for the enhanced State credit. This act would backdate the effective date for eligibility for the enhanced State credit to from 2001 to 2000, thereby including those who were allocated federal credits for investments in hurricane counties during 2000.

EXAMPLES RELATING TO THE DEFINITION OF "BUSINESS INCOME" IN SECTION 9.1.

Investment in an unrelated corporation. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A buys stock in Corporation B. Corporation A and Corporation B are not involved in the same industry and the stock is held for investment purposes only. Corporation A does not actively participate in the management of Corporation B and does not integrate operations with Corporation B. Corporation A recognizes no economies of scale due to its ownership interest in Corporation B. Corporation A and B are not unitary. Corporation A sells the Corporation B stock and recognizes a capital gain. Under this bill, the capital gain is not apportionable to North Carolina. (See: Allied Signal, Inc. v. Director, Division of Taxation, 504 U.S. 768, 112 S.Ct. 2251, 119 L.Ed.2d 533 (1992).) This income would also be nonapportionable, non-business income under current North Carolina law.

Reversion of excess pension funds. Corporation A is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporation A has made contributions to a defined-benefit employee pension plan for a number of years and has deducted these contributions from business income. The plan is found to be over-funded and a reversion of excess pension funds is allowed. The reverted funds are ordinary income for federal tax purposes. Under current North Carolina law, because the reversion is not a transaction that takes place in the regular course of business and because the right to a reversion is not an integral part of the corporation's regular course of business, the reverted funds are treated as non-business income and would not be subject to apportionment. (See: Union Carbide v. Offerman, 351 N.C. 310, 526 S.E.2d 167 (2000).) Under this bill, the reversion would be income subject to apportionment because it is income derived from a unitary business.

Liquidation of wholly-owned subsidiaries. Corporation X is a manufacturer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations A, B, and C are wholly owned subsidiaries of Corporation X. Corporations A, B, and C are domiciled in State 1 and have no business operations in North Carolina. Corporation X liquidates Corporations A, B,

and C and immediately distributes the proceeds of the liquidations to Corporation X's shareholders. Corporation X recognizes a capital gain from the liquidations.

Liquidation of Corporation A - There is centralized management between Corporations X and A and their operations are functionally integrated. Corporations X and A therefore constitute a unitary business, part of which is conducted in North Carolina. Under this bill, the proceeds of the liquidation of Corporation A would be subject to apportionment.

Liquidation of Corporation B - Corporations X and B are engaged in the same general line of business. Corporation B supplies Corporation X with the majority of a product used in Corporation X's manufacturing operations. Corporation B therefore performs an operational function in Corporation X's business. Under this bill, the proceeds of the liquidation of Corporation B would be subject to apportionment.

Liquidation of Corporation C - There is no centralized management, functional integration, or economies of scale between Corporations X and C, and Corporation C performs no operational function in Corporation X's business. Corporation C is not part of Corporation X's unitary business. Under this bill, the proceeds of the liquidation would not be subject to apportionment.

(Note: This bill removes the confusion under current law created by the decision in Lenox v. Tolson regarding the apportionability of income from the liquidation of an operating division or subsidiary. In *Lenox v. Tolson*, the Court found that the liquidation of a separate line of business was not a transaction in Lenox's regular course of business and was not a disposition of property integral to Lenox's regular trade or business. The Court held that the proceeds were therefore nonbusiness income and not apportionable. The Court, however, failed to analyze whether the acquisition or management of the property constituted integral parts of the corporation's regular trade or business, an analysis required under the actual language of the statute, the Department's administrative rules, and the Court's prior decision in *Polaroid v. Offerman*. As the dissent in Lenox points out, the property of ArtCarved was an integral part of Lenox's regular trade or business and the proceeds from the liquidation of this property should therefore have been apportionable business income under previous opinions of the Court.)

Receipt of dividends from wholly-owned subsidiaries. Corporation A is a retailer domiciled in State 1 and has business operations in States 1 and 2 and in North Carolina. Corporations B, C, and D are wholly owned subsidiaries of Corporation A. Corporations B, C, and D are engaged in retailing in foreign countries. Corporation A has no functional integration and no centralized management with Corporations B, C, and D. Corporation A realizes no economies of scale due to its ownership of Corporations B, C, and D. Corporations B, C, and D are therefore not part of a unitary business with Corporation A. Corporations B, C, and D perform no operational function in Corporation A's business. Corporation A receives dividends from Corporations B, C, and D. Therefore, under this bill, as well as under current North Carolina law, this income would not be apportionable. (See: F.W. Woolworth Co. v. Taxation and Revenue Dept. of NM, 458 U.S. 354, 102 S.Ct. 3128, 73 L.Ed.2d 819 (1982).)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1292 (CSLC-104 [v.1])

SHORT TITLE: Budget Revenue Act of 2002

SPONSOR(S):

FISCAL IMPACT

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

($million)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenues					
General Fund					
-Repeal Reimbursements	333.4				
-Repeal ½ Cent Sales Tax	(157.9)				
-Accl. Sales Tax Payments	(5.8)				
-Partial Hold Harmless	(14.5)				
-Delay Child Tax Credit	19.8	34.9			
-Delay Standard Deduction	31.9	12.6			
-Drug Tax Receipt*	.9	.9	.9	.9	.9
-Conform Internal Rev. Code	(16.9)	(25.5)	(49.7)	(76.9)	(77.3)
-Estate Tax Credit	(5.5)	(7.3)	(17.7)	(5.9)	
-Conform Gift Tax Indexing	(0.2)	(0.2)	(0.2)	(0.4)	(0.4)
-Accelerated Depreciation**	38.2	8.6	(60.8)	0	0
-Conform Business Income	70.0	50.0	53.7	56.7	59.5
-Correct LLC Franchise Tax	20.0	21.2	22.5	23.8	25.2
-Corporate Throwout Rule	11.0	11.7	12.4	13.1	13.9
-Low Income Housing Credit	(2.2)	(2.2)	(2.2)	(2.2)	(2.2)
TOTAL GENERAL FUND	**322.2**	**104.7**	**(41.1)**	**9.1**	**19.6**
Utilities Special Fund	11.9				
Insurance Reg. Fund	25.0				
Local Governments					
-Repeal Reimbursements	(333.4)				
-Accl. ½ Cent Sales Tax	157.9				
-Accl. Sales Tax Payments	5.8				
-Partial Hold Harmless	14.5				
-Drug Tax Deduction	(.9)	(.9)	(.9)	(.9)	(.9)
TOTAL LOCAL GOVTS.	**(156.1)**	**(.9)**	**(.9)**	**(.9)**	**(.9)**

*Department of Revenue will deduct 70% of costs of Unauthorized Substance Tax Division from sales tax proceeds.

**The impact of the changes is essentially revenue neutral over the long-term since the conformity deals with an acceleration of depreciation, not the total amount of the deduction over the life of the asset. Thus, there will be substantial revenue losses starting in FY 2006-07.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Insurance, Utilities Commission, NC Housing Finance Agency, Local Governments.

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Alamance	**4,116,412**	1,583,388	(2,533,024)	0	-
Alamance	3,445	3,906	461	0	-
Burlington	1,383,263	554,483	(828,780)	0	-
Elon College	107,922	81,657	(26,265)	0	-
Gibsonville		27,228	27,228	0	-
Graham	264,301	156,830	(107,471)	0	-
Green Level	8,531	23,590	15,058	0	-
Haw River	170,049	28,798	(141,251)	1	83,656
Mebane	233,027	94,116	(138,911)	0	-
Swepsonville	237	9,982	9,745	0	-
Alexander	**879,473**	436,190	(443,283)	0	-
Taylorsville	58,771	32,651	(26,120)	0	-
Alleghany	**271,292**	142,697	(128,595)	0	-
Sparta	18,976	28,465	9,489	0	-
Anson	**870,049**	286,598	(583,451)	1	1,025,6
Ansonville	4,030	7,272	3,242	0	-
Lilesville	4,271	5,156	885	0	-
McFarlan	598	1,082	484	0	-
Morven	4,269	6,599	2,330	0	-
Peachland	3,240	6,298	3,058	0	-
Polkton	10,333	21,347	11,014	0	-
Wadesboro	168,913	43,752	(125,161)	1	37,658
Ashe	**538,628**	334,088	(204,540)	0	-
Jefferson	26,280	20,032	(6,248)	0	-
Lansing	1,738	2,440	701	0	-
West Jefferson	67,461	15,738	(51,723)	1	20,246
Avery	**311,593**	288,024	(23,569)	0	-
Banner Elk	9,629	17,609	7,980	0	-
Beech Mountain		180	180	0	-
Crossnore	1,286	4,835	3,549	0	-
Elk Park	2,967	8,714	5,747	0	-
Grandfather Village	36	668	632	0	-
Newland	14,121	12,900	(1,221)	0	-
Seven Devils		433	433	0	-
Sugar Mountain	19,802	2,400	(17,402)	1	12,603
Beaufort	**1,407,581**	639,696	(767,885)	0	-
Aurora	6,655	9,807	3,152	0	-
Bath	2,711	2,680	(31)	0	-
Belhaven	24,730	33,160	8,430	0	-
Chocowinity	18,577	11,560	(7,017)	0	-
Pantego	1,659	2,506	847	0	-
Washington	235,971	146,444	(89,526)	0	-
Washington Park	4,195	7,127	2,932	0	-
Bertie	**475,321**	197,809	(277,512)	0	-

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Askewville	1,188	2,005	817	0	-
Aulander	20,800	11,831	(8,970)	0	-
Colerain	3,630	2,224	(1,405)	0	-
Kelford	1,827	1,875	48	0	-
Lewiston Woodville	11,922	8,140	(3,783)	0	-
Powellsville	2,075	2,604	529	0	-
Roxobel	2,120	2,334	215	0	-
Windsor	15,246	22,684	7,438	0	-
Bladen	**835,674**	398,267	(437,407)	0	-
Bladenboro	33,091	11,951	(21,140)	0	-
Clarkton	16,759	6,477	(10,282)	0	-
Dublin	7,090	1,687	(5,404)	1	2,030
East Arcadia	1,841	877	(964)	0	-
Elizabethtown	106,249	45,212	(61,037)	0	-
Tar Heel	637	331	(307)	0	-
White Lake	15,255	14,189	(1,066)	0	-
Brunswick	**1,315,255**	1,165,693	(149,562)	0	-
Bald Head Island	37,562	2,429	(35,133)	1	30,274
Belville	823	1,809	986	0	-
Boiling Spring Lakes	13,055	39,322	26,266	0	-
Bolivia	1,802	4,725	2,923	0	-
Calabash	4,920	17,206	12,286	0	-
Carolina Shores	1,005	21,361	20,357	0	-
Caswell Beach	4,811	5,294	484	0	-
Holden Beach	14,204	15,012	807	0	-
Leland	8,375	42,572	34,197	0	-
Navassa	2,787	9,248	6,461	0	-
Northwest	59,571	13,956	(45,615)	1	17,703
Oak Island	15,149	115,988	100,839	0	-
Ocean Isle Beach	1,073	12,850	11,778	0	-
Sandy Creek	29,476	5,043	(24,433)	1	14,347
Shallotte	21,916	22,316	400	0	-
Southport	487	44,582	44,095	0	-
Saint James	15,808	11,644	(4,164)	0	-
Sunset Beach	1,866	32,888	31,022	0	-
Varnamtown		8,712	8,712	0	-
Buncombe	**6,546,785**	3,580,010	(2,966,775)	0	-
Asheville	2,318,205	1,006,705	(1,311,499)	0	-
Biltmore Forest	53,143	39,239	(13,904)	0	-
Black Mountain	102,411	61,352	(41,059)	0	-
Montreat	22,141	16,069	(6,072)	0	-
Weaverville	71,928	34,142	(37,786)	0	-
Woodfin	49,608	16,250	(33,358)	1	857
Burke	**2,406,170**	1,045,093	(1,361,077)	0	-
Connelly Springs	4,675	19,374	14,699	0	-

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Drexel	59,291	25,626	(33,665)	0	-
Glen Alpine	10,192	13,245	3,053	0	-
Hickory		1,792	1,792	0	-
Hildebran	14,867	20,783	5,916	0	-
Long View		10,502		1	
Morganton	580,084	199,287	(380,796)	0	-
Rhodhiss		4,040	4,040	0	-
Rutherford College	6,400	15,791	9,391	0	-
Valdese	253,300	53,587	(199,713)	1	92,539
Cabarrus	**3,880,113**	1,900,675	(1,979,438)	0	-
Concord	1,660,628	684,184	(976,445)	0	-
Harrisburg	27,774	13,333	(14,440)	0	-
Kannapolis	657,741	228,238	(429,502)	0	-
Locust		15	15	0	-
Midland		489	489	0	-
Mount Pleasant	19,603	11,352	(8,252)	0	-
Caldwell	**2,437,306**	859,628	(1,577,678)	0	-
Blowing Rock		487	487	0	-
Cajah Mountain	1,204	32,297	31,094	0	-
Cedar Rock	2,715	3,863	1,148	0	-
Gamewell	1,558	43,683	42,125	0	-
Granite Falls	126,390	43,898	(82,492)	0	-
Hickory		-	-	0	-
Hudson	70,698	36,546	(34,152)	0	-
Lenoir	1,063,457	180,565	(882,893)	1	521,763
Rhodhiss	19,227	4,962	(14,265)	1	4,341
Sawmills	24,163	56,269	32,105	0	-
Camden	**118,760**	93,687	(25,073)	0	-
Elizabeth City		486	486	0	-
Carteret	**1,189,066**	1,049,539	(139,527)	0	-
Atlantic Beach	74,779	59,752	(15,026)	0	-
Beaufort	54,756	32,520	(22,236)	0	-
Bogue	1,321	451	(870)	0	-
Cape Carteret	14,872	11,760	(3,112)	0	-
Cedar Point	3,039	1,696	(1,343)	0	-
Emerald Isle	80,334	69,534	(10,800)	0	-
Indian Beach	7,311	6,186	(1,125)	0	-
Morehead City	176,297	90,561	(85,736)	0	-
Newport	24,686	17,588	(7,098)	0	-
Peletier	985	394	(591)	0	-
Pine Knoll Shores	28,605	22,857	(5,748)	0	-
Caswell	**432,325**	255,125	(177,200)	0	-
Milton	1,326	573	(753)	0	-
Yanceyville	20,327	7,854	(12,473)	0	-
Catawba	**4,211,477**	2,111,472	(2,100,005)	0	-

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Brookford	18,381	7,037	(11,344)	0	-
Catawba	14,209	10,909	(3,300)	0	-
Claremont	118,138	16,892	(101,247)	1	67,464
Conover	478,595	115,973	(362,622)	1	130,676
Hickory	1,798,446	565,334	(1,233,112)	1	102,443
Long View	189,479	60,309	(129,170)	1	8,553
Maiden	118,002	49,446	(68,556)	0	-
Newton	510,763	194,920	(315,843)	0	-
Chatham	**1,572,359**	676,332	(896,027)	0	-
Cary		43	43	0	-
Goldston	8,367	5,481	(2,886)	0	-
Pittsboro	42,094	32,140	(9,954)	0	-
Siler City	179,303	80,678	(98,625)	0	-
Cherokee	**483,033**	395,085	(87,948)	0	-
Andrews	30,939	34,676	3,737	0	-
Murphy	46,039	28,169	(17,870)	0	-
Chowan	**448,912**	213,033	(235,879)	0	-
Edenton	127,132	35,779	(91,353)	1	19,796
Clay	**166,722**	128,042	(38,680)	0	-
Hayesville	4,710	2,833	(1,877)	0	-
Cleveland	**2,680,820**	1,326,774	(1,354,046)	0	-
Belwood		-	-	0	-
Boiling Springs	24,582	14,405	(10,177)	0	-
Casar	784	154	(630)	1	321
Earl	693	255	(438)	0	-
Fallston	1,399	455	(945)	1	36
Grover	15,446	3,879	(11,567)	1	3,809
Kings Mountain*	162,516	59,380	(103,136)	0	-
Kingstown	4,791	2,383	(2,408)	0	-
Lattimore	1,200	744	(456)	0	-
Lawndale	19,743	2,816	(16,927)	1	11,295
Mooresboro		-	-	0	-
Patterson Springs		-	-	0	-
Polkville	1,260	311	(949)	1	326
Shelby	324,100	196,435	(127,665)	0	-
Waco	786	212	(575)	1	151
Columbus	**1,757,565**	602,540	(1,155,025)	0	-
Boardman	747	2,400	1,653	0	-
Bolton	4,530	6,212	1,682	0	-
Brunswick	3,981	3,514	(468)	0	-
Cerro Gordo	1,378	2,526	1,148	0	-
Chadbourn	31,618	24,078	(7,540)	0	-
Fair Bluff	11,963	13,021	1,057	0	-
Lake Waccamaw	18,048	17,889	(159)	0	-
Sandyfield	1,791	3,399	1,608	0	-

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Tabor City	79,416	28,040	(51,376)	0	-
Whiteville	226,990	64,254	(162,735)	1	34,227
Craven	**1,961,091**	1,237,764	(723,327)	0	-
Bridgeton	9,758	4,566	(5,193)	0	-
Cove City	1,993	797	(1,196)	0	-
Dover	2,888	1,586	(1,302)	0	-
Havelock	150,533	79,748	(70,785)	0	-
New Bern	474,536	297,976	(176,560)	0	-
River Bend	21,365	15,493	(5,872)	0	-
Trent Woods	22,367	14,038	(8,329)	0	-
Vanceboro	9,535	6,599	(2,936)	0	-
Cumberland	**5,231,949**	3,522,499	(1,709,450)	0	-
Falcon	1,323	4,634	3,310	0	-
Fayetteville	1,418,415	1,539,851	121,436	0	-
Godwin	458	881	423	0	-
Hope Mills	75,671	131,537	55,867	0	-
Linden	846	2,040	1,193	0	-
Spring Lake	62,262	103,371	41,109	0	-
Stedman	5,061	7,952	2,891	0	-
Wade	3,147	5,515	2,368	0	-
Currituck	**267,405**	419,883	152,478	0	-
Dare	**446,113**	1,033,401	587,288	0	-
Kill Devil Hills	63,222	119,087	55,865	0	-
Kitty Hawk	29,272	48,256	18,984	0	-
Manteo	40,773	27,988	(12,786)	0	-
Nags Head	52,495	109,761	57,266	0	-
Southern Shores	20,079	37,414	17,335	0	-
Davidson	**3,590,778**	1,827,775	(1,763,003)	0	-
Denton	51,555	20,132	(31,423)	0	-
High Point		9,925	9,925	0	-
Lexington	416,839	247,704	(169,135)	0	-
Thomasville	943,278	226,881	(716,397)	1	262,636
Davie	2,571,572	418,285	(2,153,287)	1	1,916,718
Bermuda Run	580	23,459	22,880	0	-
Cooleemee	8,464	13,601	5,137	0	-
Mocksville	326,134	56,193	(269,940)	1	157,553
Duplin	**1,068,664**	553,082	(515,582)	0	-
Beulaville	18,605	15,423	(3,182)	0	-
Calypso	7,703	6,475	(1,228)	0	-
Faison	43,898	9,619	(34,279)	1	15,040
Greenevers	2,276	6,947	4,671	0	-
Harrells		25	25	0	-
Kenansville	9,881	11,223	1,341	0	-
Magnolia	5,647	10,489	4,843	0	-
Mount Olive		25	25	0	-

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Rose Hill	32,768	17,971	(14,797)	0	-
Teachey	1,769	3,057	1,288	0	-
Wallace	53,616	42,604	(11,012)	0	-
Warsaw	92,782	37,720	(55,062)	0	-
Durham	**9,865,341**	**2,940,805**	**(6,924,536)**		
Chapel Hill		20,651	20,651	0	-
Durham	3,680,605	2,447,025	(1,233,580)	0	-
Morrisville		-	-	0	-
Raleigh		29	29	0	-
Edgecombe	**1,702,759**	**557,067**	**(1,145,692)**		
Conetoe	1,906	2,856	950	0	-
Leggett	470	1,103	633	0	-
Macclesfield	4,356	5,093	737	0	-
Pinetops	13,241	16,176	2,935	0	-
Princeville	19,963	22,238	2,275	0	-
Rocky Mount		178,149	178,149	0	-
Sharpsburg		1,175	1,175	0	-
Speed	444	897	453	0	-
Tarboro	436,539	109,209	(327,330)	1	108,911
Whitakers		4,505	4,505	0	-
Forsyth	**13,528,655**	**4,299,819**	**(9,228,836)**		
Bethania	2,130	1,100	(1,031)	0	-
Clemmons	65,814	28,259	(37,554)	0	-
High Point		58	58	0	-
Kernersville	1,281,322	201,987	(1,079,335)	1	675,360
King		8,151	8,151	0	-
Lewisville	31,091	13,777	(17,314)	0	-
Rural Hall	45,592	17,675	(27,917)	0	-
Tobaccoville	5,954	1,656	(4,298)	1	985
Walkertown	30,435	13,972	(16,463)	0	-
Winston-Salem	7,919,187	1,952,499	(5,966,688)	1	2,061,690
Franklin	**932,591**	601,360	(331,231)	0	-
Bunn	4,685	2,713	(1,972)	0	-
Centerville		-	-	0	-
Franklinton	23,215	11,920	(11,295)	0	-
Louisburg	42,859	25,773	(17,085)	0	-
Youngsville	19,117	7,472	(11,645)	0	-
Gaston	**6,143,884**	2,133,080	(4,010,804)	0	-
Belmont	208,550	100,020	(108,530)	0	-
Bessemer City	112,004	58,937	(53,067)	0	-
Cherryville	101,719	64,359	(37,361)	0	-
Cramerton	65,083	30,262	(34,820)	0	-
Dallas	21,116	38,319	17,203	0	-
Gastonia	1,463,183	749,204	(713,979)	0	-
High Shoals	18,215	7,186	(11,029)	0	-

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Kings Mountain		14,961	14,961	0	-
Lowell	91,142	30,509	(60,633)	0	-
McAdenville	353	9,668	9,315	0	-
Mount Holly	409,604	98,573	(311,031)	1	113,885
Ranlo	55,979	25,910	(30,068)	0	-
Spencer Mountain	1,841	1,529	(312)	0	-
Stanley	66,340	38,154	(28,186)	0	-
Gates	**233,369**	114,857	(118,512)	0	-
Gatesville	2,528	3,566	1,038	0	-
Graham	**159,541**	101,031	(58,510)	0	-
Robbinsville	54,620	10,571	(44,050)	1	22,909
Lake Santeetlah	2,728	591	(2,137)	1	955
Granville	**1,842,358**	573,919	(1,268,439)	1	420,501
Creedmoor	33,441	27,667	(5,774)	0	-
Oxford	208,066	115,870	(92,197)	0	-
Stem	2,626	3,662	1,036	0	-
Stovall	3,249	5,897	2,648	0	-
Greene	**445,629**	211,436	(234,193)	0	-
Hookerton	5,021	2,026	(2,995)	0	-
Snow Hill	18,002	9,127	(8,875)	0	-
Walstonburg	2,591	1,272	(1,318)	0	-
Guilford	**15,813,790**	5,351,911	(10,461,879)	0	-
Archdale		5,142	5,142	0	-
Burlington		259	259	0	-
Gibsonville	141,786	29,995	(111,791)	1	51,801
Greensboro	8,041,222	2,836,129	(5,205,093)	0	-
High Point	3,270,455	1,044,527	(2,225,928)	1	136,873
Jamestown	47,096	48,210	1,114	0	-
Kernersville		-	-	0	-
Oak Ridge	847	35,111	34,264	0	-
Pleasant Garden	1,455	60,345	58,890	0	-
Sedalia	201	8,326	8,125	0	-
Stokesdale	813	33,506	32,692	0	-
Summerfield	2,026	84,042	82,016	0	-
Whitsett	247	10,216	9,970	0	-
Halifax	**1,551,036**	660,003	(891,033)	0	-
Enfield	31,205	13,347	(17,858)	0	-
Halifax	3,198	1,649	(1,549)	0	-
Hobgood	3,274	1,584	(1,690)	0	-
Littleton	19,820	6,869	(12,950)	0	-
Roanoke Rapids	554,377	205,681	(348,696)	0	-
Scotland Neck	37,104	12,839	(24,264)	0	-
Weldon	34,004	16,425	(17,578)	0	-
Harnett	**1,273,246**	1,071,831	(201,415)	0	-
Angier	35,064	25,618	(9,446)	0	-

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Broadway		40	40	0	-
Coats	22,303	15,661	(6,642)	0	-
Dunn	257,080	88,262	(168,818)	0	-
Erwin	117,179	44,265	(72,914)	0	-
Lillington	80,512	32,436	(48,077)	0	-
Haywood	**1,262,259**	799,506	(462,753)	0	-
Canton	298,907	55,970	(242,938)	1	130,998
Clyde	11,393	17,526	6,133	0	-
Maggie Valley	17,699	9,929	(7,769)	0	-
Waynesville	185,212	151,365	(33,846)	0	-
Henderson	**3,327,296**	1,342,633	(1,984,663)	0	-
Flat Rock	829	31,184	30,355	0	-
Fletcher	70,551	54,706	(15,845)	0	-
Hendersonville	458,725	161,706	(297,019)	0	-
Laurel Park	52,667	35,064	(17,603)	0	-
Saluda		65	65	0	-
Hertford	**587,675**	300,121	(287,554)	0	-
Ahoskie	96,877	45,943	(50,933)	0	-
Cofield	34,962	2,590	(32,372)	1	27,193
Como	927	351	(576)	0	-
Harrellsville	782	424	(358)	0	-
Murfreesboro	53,138	21,912	(31,226)	0	-
Winton	27,465	7,005	(20,460)	1	6,451
Hoke	**690,891**	318,472	(372,419)	0	-
Raeford	244,943	46,666	(198,277)	1	104,946
Hyde	**137,755**	102,108	(35,647)	0	-
Iredell	**2,939,504**	1,821,930	(1,117,574)	0	-
Davidson		16	16	0	-
Harmony	2,255	9,341	7,086	0	-
Love Valley	501	1,284	783	0	-
Mooresville	520,232	255,928	(264,304)	0	-
Statesville	1,229,773	353,285	(876,488)	1	169,919
Troutman	66,438	32,509	(33,929)	0	-
Jackson	**622,160**	566,154	(56,006)	0	-
Dillsboro	2,944	2,426	(518)	0	-
Forest Hills	1,400	731	(670)	0	-
Highlands		1,182	1,182	0	-
Sylva	62,246	35,015	(27,231)	0	-
Webster	1,246	229	(1,016)	1	558
Johnston	**2,409,952**	1,787,438	(622,514)	0	-
Benson	38,930	27,979	(10,950)	0	-
Clayton	142,326	85,641	(56,685)	0	-
Four Oaks	10,538	7,467	(3,071)	0	-
Kenly	26,198	14,185	(12,013)	0	-
Micro	3,124	2,041	(1,083)	0	-

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Pine Level	9,268	6,448	(2,820)	0	-
Princeton	9,536	6,462	(3,074)	0	-
Selma	153,158	43,924	(109,233)	1	21,385
Smithfield	169,896	127,385	(42,511)	0	-
Wilson's Mills	1,989	1,005	(985)	0	-
Jones	**161,772**	93,226	(68,546)	0	-
Maysville	7,804	3,358	(4,447)	0	-
Pollocksville	2,868	1,118	(1,750)	0	-
Trenton	2,791	1,059	(1,732)	0	-
Lee	**1,656,688**	643,059	(1,013,629)	0	-
Broadway	15,168	14,703	(465)	0	-
Sanford	776,325	291,320	(485,004)	0	-
Lenoir	**1,794,441**	771,489	(1,022,952)	0	-
Grifton		630	630	0	-
Kinston	630,182	226,370	(403,812)	0	-
La Grange	29,095	13,934	(15,161)	0	-
Pink Hill	17,157	4,551	(12,606)	1	3,505
Lincoln	**1,698,424**	866,944	(831,480)	0	-
High Shoals	518,557	-	(518,557)	1	518,557
Lincolnton		149,883	149,883	0	-
Maiden		14	14	0	-
Macon	**567,223**	566,525	(698)	0	-
Franklin	68,958	45,844	(23,114)	0	-
Highlands	44,962	44,925	(37)	0	-
Madison	**326,526**	219,351	(107,175)	0	-
Hot Springs	8,352	6,484	(1,868)	0	-
Mars Hill	27,320	19,233	(8,087)	0	-
Marshall	24,892	10,137	(14,755)	0	-
Martin	**939,860**	361,870	(577,990)	0	-
Bear Grass	531	255	(277)	0	-
Everetts	1,552	676	(875)	0	-
Hamilton	3,853	1,882	(1,972)	0	-
Hassell	411	131	(280)	1	19
Jamesville	5,725	2,816	(2,909)	0	-
Oak City	3,367	1,670	(1,697)	0	-
Parmele	2,207	840	(1,368)	0	-
Robersonville	39,457	10,918	(28,539)	1	6,704
Williamston	171,449	55,319	(116,130)	1	5,493
McDowell	**1,214,640**	601,134	(613,506)	0	-
Marion	233,569	77,013	(156,556)	1	2,530
Old Fort	147,295	15,012	(132,283)	1	102,258
Mecklenburg	**24,379,846**	11,367,558	(13,012,288)	0	-
Charlotte	13,815,551	5,353,527	(8,462,024)	0	-
Cornelius	127,918	117,792	(10,126)	0	-
Davidson	146,785	47,575	(99,210)	1	4,061

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Huntersville	173,689	126,589	(47,099)	0	-
Matthews	267,855	121,671	(146,185)	0	-
Mint Hill	102,736	63,856	(38,880)	0	-
Pineville	121,657	40,431	(81,225)	1	362
Mitchell	**431,788**	229,473	(202,315)	0	-
Bakersville	5,249	3,591	(1,658)	0	-
Spruce Pine	84,426	36,386	(48,040)	0	-
Montgomery	**664,726**	287,543	(377,183)	0	-
Biscoe	44,837	19,240	(25,597)	0	-
Candor	19,102	8,699	(10,403)	0	-
Mount Gilead	51,417	16,007	(35,410)	1	3,397
Star	106,337	10,241	(96,095)	1	75,612
Troy	94,699	43,762	(50,937)	0	-
Moore	**2,771,784**	1,099,329	(1,672,455)	0	-
Aberdeen	185,496	56,982	(128,513)	1	14,549
Cameron	3,845	6,005	2,160	0	-
Carthage	44,523	30,240	(14,283)	0	-
Foxfire Village	13,004	6,705	(6,299)	0	-
Pinebluff	29,237	15,538	(13,699)	0	-
Pinehurst	392,276	134,018	(258,258)	0	-
Robbins	61,136	17,347	(43,789)	1	9,094
Southern Pines	536,906	155,045	(381,862)	1	71,773
Taylortown	13,525	11,691	(1,833)	0	-
Vass	24,415	11,327	(13,089)	0	-
Whispering Pines	65,240	27,701	(37,539)	0	-
Nash	**2,587,253**	1,098,582	(1,488,671)	0	-
Bailey	11,158	7,179	(3,979)	0	-
Castalia	1,545	3,281	1,736	0	-
Dortches	742	11,262	10,520	0	-
Middlesex	15,086	11,965	(3,121)	0	-
Momeyer	853	3,429	2,577	0	-
Nashville	75,939	50,757	(25,182)	0	-
Red Oak	2,131	32,551	30,420	0	-
Rocky Mount	1,320,225	502,345	(817,880)	0	-
Sharpsburg	15,529	16,418	889	0	-
Spring Hope	23,434	16,233	(7,202)	0	-
Whitakers	10,888	5,070	(5,818)	0	-
New Hanover	**4,733,498**	2,840,136	(1,893,362)	0	-
Carolina Beach	83,467	70,234	(13,233)	0	-
Kure Beach	30,278	23,112	(7,166)	0	-
Wilmington	1,868,621	1,020,397	(848,224)	0	-
Wrightsville Beach	76,873	54,873	(22,000)	0	-
Northampton	**466,764**	199,770	(266,994)	0	-
Conway	17,048	7,438	(9,609)	0	-
Garysburg	9,452	10,308	857	0	-

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Gaston	10,666	10,385	(281)	0	-
Jackson	6,158	5,369	(789)	0	-
Lasker	892	1,449	558	0	-
Rich Square	11,316	10,299	(1,017)	0	-
Seaboard	12,676	7,705	(4,970)	0	-
Severn	21,293	2,422	(18,870)	1	14,026
Woodland	8,134	7,085	(1,049)	0	-
Onslow	**1,650,487**	1,669,367	18,880	0	-
Holly Ridge	21,215	9,029	(12,186)	0	-
Jacksonville	514,329	832,938	318,610	0	-
North Topsail Beach	42,466	12,823	(29,644)	1	3,998
Richlands	13,412	14,297	885	0	-
Surf City		3,816	3,816	0	-
Swansboro	20,921	16,988	(3,933)	0	-
Orange	**3,183,344**	1,377,152	(1,806,192)	0	-
Carrboro	246,322	200,927	(45,395)	0	-
Chapel Hill	729,467	539,600	(189,868)	0	-
Durham		289	289	0	-
Hillsborough	103,392	67,524	(35,868)	0	-
Mebane		7,015	7,015	0	-
Pamlico	**249,962**	169,641	(80,321)	0	-
Alliance		-	-	0	-
Arapahoe	1,044	124	(920)	1	672
Bayboro	4,727	1,817	(2,911)	0	-
Grantsboro	1,319	335	(985)	1	315
Mesic	1,424	457	(968)	1	54
Minnesott Beach	2,503	1,425	(1,078)	0	-
Oriental	12,538	6,510	(6,028)	0	-
Stonewall	1,170	398	(773)	0	-
Vandemere	1,766	685	(1,081)	0	-
Pasquotank	**800,342**	518,602	(281,740)	0	-
Elizabeth City	294,253	185,766	(108,487)	0	-
Pender	**608,771**	495,533	(113,238)	0	-
Atkinson	2,456	4,234	1,778	0	-
Burgaw	36,821	47,454	10,633	0	-
Saint Helena	1,855	4,692	2,837	0	-
Surf City	36,737	11,101	(25,636)	1	3,435
Topsail Beach	17,994	5,824	(12,171)	1	523
Wallace		458	458	0	-
Watha	531	2,225	1,694	0	-
Perquimans	**187,613**	122,450	(65,163)	0	-
Hertford	18,578	26,141	7,564	0	-
Winfall	3,991	5,282	1,291	0	-
Person	**764,084**	482,229	(281,855)	0	-
Roxboro	212,482	89,262	(123,220)	0	-

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Pitt	**2,968,158**	1,664,115	(1,304,043)	0	-
Ayden	37,102	56,842	19,739	0	-
Bethel	16,991	22,174	5,183	0	-
Falkland	688	1,536	848	0	-
Farmville	149,829	58,950	(90,879)	0	-
Fountain	5,910	4,776	(1,134)	0	-
Greenville	931,830	759,411	(172,419)	0	-
Grifton	21,312	31,310	9,998	0	-
Grimesland	3,309	6,155	2,846	0	-
Simpson	3,519	5,531	2,011	0	-
Winterville	58,482	51,779	(6,703)	0	-
Polk	**976,829**	210,838	(765,991)	0	-
Columbus	37,343	11,124	(26,219)	1	3,970
Saluda	31,349	8,135	(23,215)	1	6,946
Tryon	101,603	23,071	(78,533)	1	32,391
Randolph	**3,058,549**	1,518,661	(1,539,888)	0	-
Archdale	124,894	103,636	(21,258)	0	-
Asheboro	950,335	235,092	(715,243)	1	245,059
Franklinville	5,221	11,169	5,948	0	-
High Point		757	757	0	-
Liberty	80,593	28,302	(52,291)	0	-
Ramseur	78,284	19,477	(58,807)	1	19,853
Randleman	123,508	39,771	(83,737)	1	4,194
Seagrove	12,520	3,210	(9,310)	1	2,890
Staley	2,310	4,088	1,778	0	-
Thomasville		-	-	0	-
Trinity	22,452	91,902	69,449	0	-
Richmond	**1,080,155**	576,203	(503,952)	0	-
Dobbins Heights	7,701	14,099	6,398	0	-
Ellerbee	19,819	14,814	(5,005)	0	-
Hamlet	78,395	85,554	7,159	0	-
Hoffman	2,336	6,023	3,686	0	-
Norman	84	1,199	1,116	0	-
Rockingham	190,466	124,624	(65,842)	0	-
Robeson	**2,862,190**	1,458,511	(1,403,679)	0	-
Fairmont	71,173	37,723	(33,450)	0	-
Lumber Bridge	646	1,353	707	0	-
Lumberton	516,596	261,003	(255,593)	0	-
Marietta	326	2,845	2,519	0	-
Maxton	49,426	34,929	(14,497)	0	-
McDonald	314	1,126	811	0	-
Orrum	148	1,277	1,130	0	-
Parkton	3,851	4,565	714	0	-
Pembroke	32,162	34,372	2,210	0	-
Proctorville	831	2,213	1,382	0	-

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Raynham	534	1,530	997	0	-
Red Springs	46,480	49,282	2,801	0	-
Rennert	909	3,048	2,139	0	-
Rowland	21,333	14,189	(7,144)	0	-
Saint Pauls	55,838	28,593	(27,245)	0	-
Rockingham	3,163,677	1,013,677	(2,150,000)		
Eden	476,774	173,459	(303,315)	0	-
Madison	153,544	27,312	(126,233)	1	71,610
Mayodan	97,816	28,147	(69,669)	1	13,374
Reidsville	634,679	162,039	(472,639)	1	148,561
Stoneville	58,538	13,080	(45,458)	1	19,299
Wentworth	1,050	22,127	21,078	0	-
Rowan	**3,948,513**	1,488,259	(2,460,254)	0	-
China Grove	49,482	45,890	(3,592)	0	-
Cleveland	120,524	10,778	(109,747)	1	88,192
East Spencer	36,048	28,144	(7,903)	0	-
Faith	9,729	8,672	(1,057)	0	-
Granite Quarry	48,118	25,329	(22,789)	0	-
Kannapolis		107,964	107,964	0	-
Landis	48,613	38,496	(10,117)	0	-
Rockwell	40,288	21,401	(18,887)	0	-
Salisbury	1,578,721	318,911	(1,259,810)	1	621,988
Spencer	69,149	39,442	(29,707)	0	-
Rutherford	**1,866,972**	838,500	(1,028,472)	0	-
Alexander Mills	1,964	-	(1,964)	1	1,964
Bostic	1,713	1,081	(633)	0	-
Chimney Rock Village	2,935	1,420	(1,515)	0	-
Ellenboro	164,461	1,746	(162,715)	1	159,223
Forest City	45,447	44,745	(702)	0	-
Lake Lure	14,856	39,435	24,579	0	-
Ruth	109,585	2,470	(107,115)	1	102,174
Rutherfordton	187,004	46,022	(140,983)	1	48,939
Spindale		47,305	47,305	0	-
Sampson	**1,260,784**	678,663	(582,121)	0	-
Autryville	1,841	2,657	816	0	-
Clinton	333,996	121,171	(212,825)	0	-
Falcon		-	-	0	-
Faison		-	-	0	-
Garland	19,779	10,138	(9,641)	0	-
Harrells	2,222	2,531	310	0	-
Newton Grove	9,300	7,431	(1,868)	0	-
Roseboro	19,768	19,713	(55)	0	-
Salemburg	7,026	5,339	(1,688)	0	-
Turkey	2,155	3,697	1,542	0	-
Scotland	1,551,985	513,701	(1,038,284)		

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
East Laurinburg		-	-	0	-
Gibson	5,791	3,495	(2,296)	0	-
Laurinburg	169,418	100,067	(69,351)	0	-
Maxton		2,866	2,866	0	-
Wagram	6,176	4,012	(2,163)	0	-
Stanly	**1,489,307**	688,712	(800,595)	0	-
Albemarle	362,952	193,798	(169,154)	0	-
Badin	30,232	17,794	(12,437)	0	-
Locust	18,593	30,284	11,691	0	-
New London	2,153	5,772	3,619	0	-
Norwood	56,523	30,885	(25,637)	0	-
Oakboro	31,627	17,021	(14,606)	0	-
Richfield	4,397	6,963	2,566	0	-
Stanfield	11,994	11,986	(9)	0	-
Stokes	**3,483,045**	546,963	(2,936,082)	0	-
Danbury	842	599	(243)	0	-
King	68,237	36,864	(31,373)	0	-
Walnut Cove	17,792	10,963	(6,829)	0	-
Surry	**2,425,076**	1,143,186	(1,281,890)	0	-
Dobson	31,111	21,903	(9,208)	0	-
Elkin	311,342	64,580	(246,763)	1	117,604
Mount Airy	784,521	142,925	(641,596)	1	355,745
Pilot Mountain	91,657	21,421	(70,236)	1	27,393
Swain	**210,486**	178,493	(31,993)	0	-
Bryson City	23,001	16,065	(6,937)	0	-
Transylvania	**1,221,869**	494,836	(727,033)	0	-
Brevard	185,434	57,281	(128,153)	1	13,592
Rosman	8,049	1,334	(6,715)	1	4,046
Tyrrell	**103,133**	51,515	(51,618)	0	-
Columbia	7,627	2,461	(5,165)	1	242
Union	**2,684,821**	1,775,580	(909,241)	0	-
Hemby Bridge	6	275	270	0	-
Indian Trail	33,636	21,699	(11,937)	0	-
Lake Park	4,523	4,647	124	0	-
Marshville	33,461	18,789	(14,673)	0	-
Marvin	3,545	781	(2,764)	1	1,203
Mineral Springs	33	1,325	1,293	0	-
Monroe	735,910	315,508	(420,402)	0	-
Stallings	24,739	10,195	(14,544)	0	-
Unionville	28	1,265	1,237	0	-
Waxhaw	19,897	19,123	(774)	0	-
Weddington	13,260	3,681	(9,578)	1	2,215
Wesley Chapel	3,905	851	(3,054)	1	1,352
Wingate	12,216	9,675	(2,540)	0	-
Vance	**1,418,579**	662,011	(756,568)	0	-

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Henderson	433,425	169,170	(264,255)	0	-
Kittrell	19,805	117	(19,688)	1	19,455
Middleburg	673	420	(253)	0	-
Wake	**13,661,672**	8,766,161	(4,895,511)	0	-
Apex	427,022	262,563	(164,460)	0	-
Cary	1,395,168	1,376,476	(18,692)	0	-
Fuquay-Varina	247,544	103,083	(144,461)	0	-
Garner	270,693	273,694	3,001	0	-
Holly Springs	95,733	113,770	18,036	0	-
Knightdale	59,457	77,594	18,137	0	-
Morrisville	245,197	60,468	(184,729)	1	63,793
Raleigh	5,740,189	4,051,687	(1,688,502)	0	-
Rolesville	73,040	13,011	(60,029)	1	34,007
Wake Forest	248,601	178,352	(70,249)	0	-
Wendell	57,801	59,682	1,881	0	-
Zebulon	606,626	68,534	(538,092)	1	401,023
Warren	**425,618**	228,367	(197,251)	0	-
Macon	795	1,937	1,142	0	-
Norlina	7,046	12,900	5,854	0	-
Warrenton	24,554	11,781	(12,774)	0	-
Washington	**312,826**	152,825	(160,001)	0	-
Creswell	2,819	3,889	1,070	0	-
Plymouth	55,246	45,705	(9,541)	0	-
Roper	10,044	7,290	(2,753)	0	-
Watauga	**715,559**	740,158	24,599	0	-
Beech Mountain	59,607	4,754	(54,853)	1	45,345
Blowing Rock	72,734	23,208	(49,527)	1	3,111
Boone	250,137	256,354	6,217	0	-
Seven Devils	18,405	2,050	(16,355)	1	12,254
Wayne	**2,187,578**	1,491,138	(696,440)	0	-
Eureka	2,697	2,066	(631)	0	-
Fremont	40,584	10,888	(29,696)	1	7,920
Goldsboro	1,030,485	437,881	(592,604)	0	-
Mount Olive	142,207	52,701	(89,506)	0	-
Pikeville	17,665	7,326	(10,339)	0	-
Seven Springs	1,686	743	(943)	0	-
Walnut Creek	12,176	12,706	530	0	-
Wilkes	**1,791,831**	1,033,381	(758,450)	0	-
Elkin		1,199	1,199	0	-
North Wilkesboro	278,542	62,641	(215,901)	1	90,618
Ronda	6,558	5,916	(642)	0	-
Wilkesboro	179,271	51,928	(127,343)	1	23,486
Wilson	**2,189,105**	957,230	(1,231,875)	0	-
Black Creek	4,594	3,334	(1,260)	0	-
Elm City	46,764	9,446	(37,318)	1	18,426

2002-03 Sales Tax Swap
(January 1, 2003 effective date) Limited Hold Harmless

Local Governments	Reimbursements	Projected Sales Tax Revenue	Net Change from Swap	Impacted?	Cost to State
Kenly		617	617	0	-
Lucama	5,436	3,754	(1,682)	0	-
Saratoga	3,466	2,202	(1,264)	0	-
Sharpsburg		1,259	1,259	0	-
Sims	1,492	629	(863)	0	-
Statonsburg	4,699	3,048	(1,651)	0	-
Wilson	801,123	401,975	(399,148)	0	-
Yadkin	**806,898**	490,097	(316,801)	0	-
Arlington	5,248	2,831	(2,417)	0	-
Boonville	26,335	6,515	(19,819)	1	6,789
East Bend	7,810	6,032	(1,778)	0	-
Jonesville	30,081	18,572	(11,509)	0	-
Yadkinville	97,251	27,627	(69,624)	1	14,370
Yancey	**384,636**	254,310	(130,326)	0	-
Burnsville	48,621	24,161	(24,460)	0	-
GRAND TOTAL	333,381,470	157,885,333		114	14,453,966
Costs to State:					
Counties	5,471,250				
Municipalities	8,982,716				
All Local Units	14,453,966				
NOTE: Negative numbers in the column "Net Change from Swap"					
indicate <u>actual</u> losses. However, those losses will be reduced by the amount of					
any payment made under the "cost to state" column.					

MINUTES
HOUSE COMMITTEE ON FINANCE

July 30, 2002

The House Committee on Finance met on Tuesday, July 30, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Martha Alexander, John Blust, Russell Capps, Leslie Cox, Michael Decker, Andrew Dedmon, Rick Eddins, Zeno Edwards, Pryor Gibson, Lyons Gray, Joe Hackney, Hugh Holliman, Bill Hurley, Linda Johnson, Eugene McCombs, Edwin McMahan, Art Pope, John Rayfield, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble. Staff members present were Cindy Avrette, Trina Griffin, Martha Walston, Richard Bostic, and Linda Millsaps. A Visitor Registration Sheet is attached and made a part of these minutes.

Chairman Luebke introduced the pages as follows: Sam Gunnells, Wake County; Elliott Seeger, Henderson County; Lauren Brooks, Person County, and Elizabeth Carver, Person County. Sergeants-at-Arms serving the committee were Dusty Rhodes, Bob Fowler, Walter Spell, and Bill Freeman.

S.B. 1114, BADIN CHARTER/NORMAN BOUNDARIES, was before the committee for consideration.

Senator Bill Purcell, bill sponsor, advised that the Badin part of the bill had previously been before the committee. The bill added some metes and bounds in a description for the Town of Norman that had not been there before -- there was no change or addition to the town.

Rep. Gibson moved that the proposed committee substitute be before the committee.

Rep. Womble moved for a favorable report of the committee substitute. There being no discussion on the bill, vote was taken and the committee substitute was given a favorable report; unfavorable as to original bill.

H.B. 1523, AMEND PROPERTY TAX LAWS, was before the committee for consideration. Rep. Dewey Hill, bill sponsor, explained that the bill was a recommendation from the Revenue Laws Study Commission and contained five changes to the property tax laws that were proposed by the North Carolina Association of Assessing Officers and the Department of Revenue.

Martha Walston stated that an amendment concerning the debt set-off was adopted when the bill was before the committee on June 12th.

Rep. Hackney sent forth an amendment and was recognized to explain the amendment. He said it tracked another part of the law and put in place the same procedure for a waiver if circumstances made it extremely unfair that the penalty be assessed.

Rep. Hurley moved for adoption of the amendment. Vote was taken on Rep. Hackney's amendment and it received a favorable vote.

Rep. Hill sent forth an amendment that had been requested by two committee members. Martha Walston explained that if a local government received revenues that were substantially more or less than anticipated after July 1, then prior to January 1, the budget ordinance could be amended to reduce or increase the property tax levy to take into account the unanticipated revenue increase or decrease. Rep. Hill moved for approval of the amendment.

Rep. Pope, Rep. Womble and Rep. Edwards spoke against the amendment citing administrative problems with rebilling property taxes after the original tax bills had been issued and collections already having started. They felt that the logistics of collecting the additional revenue and the extra expense of the modification would outweigh the benefits.

James B. Blackburn, III, N. C. Association of County Commissioners, indicated that the Association had no opposition to the amendment, but to exercise the option that the amendment offered would mean that the county was in extremely difficult circumstances.

Pete Rodda, Forsyth County Tax Assessor and Collector, indicated that the assessors and collectors had no opposition to the amendment. He said there were some administrative problems, but in extraordinary times, extraordinary measures were a nice option to have available.

Rep. Hill withdrew the amendment.

Rep. Buchanan offered an amendment of Section 4, Page 2, Lines 27-32. Ms. Walston said that the amendment would delete that language so that it would retain the current law. In the last session, the definition of real property was changed to remove the requirement that a manufactured home had to be multi-sectioned. The tax assessors had requested that the effective date be moved from July 1, 2002, to July 1, 2004, due to their inability to identify the numerous manufactured homes in the state by July 1, 2002. This amendment would move the effective date back to July 1, 2002, for the change in the definition of manufactured homes.

Pete Rodda stated the reasons for the tax assessors' request for an extension of time was due to the abundance of manufactured homes in North Carolina. The assessors needed more time to make visual inspections to determine the proper classification of real or personal property.

Rep. Luebke clarified that the amendment removed Section 4 of the bill by deleting Lines 27-32 and renumbering accordingly. He also clarified that by removing Section 4, the 2002 date which was already in the statute would remain.

Rep. Wainwright asked Mr. Rodda if tax assessors could complete inspections in 2003, rather than 2004. Mr. Rodda repeated that they needed 2004, but would live with 2003.

After considerable debate from committee members, Rep. Buchanan withdrew the amendment. He then submitted an amendment that deleted the year 2004 and substituted the year 2003 on Page 2, Line 29.

Rep. Womble moved for adoption of the amendment to change the date to 2003, and it passed with a vote of 11-10.

Rep. Willingham sent forth an amendment and moved for its adoption. Martha Walston explained that the only thing that the amendment did was to change some effective dates to a later date. The amendment received a favorable vote.

Rep. Hill moved that the bill be given a favorable report with amendments rolled into a committee substitute, unfavorable as to original bill. Vote was taken and bill passed with a favorable report.

There being no further business, the Chair adjourned the meeting at 9:35 A.M. to reconvene on Thursday, August 1, 2002.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

ATTACHMENTS:

Agenda
Visitor Registration Sheet

Committee Report of SB 1114
Proposed Committee Substitute for SB 1114
Original SB 1114
Bill Analysis for SB 1114

Committee Report for HB 1523
Proposed Committee Substitute for HB 1523
Amendments
Original HB 1523
Bill Analysis
Fiscal Note

AGENDA

House Finance Committee

July 30, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1523 AMEND PROPERTY TAX LAWS - REP. HILL

HB 1736 RETIRED LEGISLATOR LICENSE PLATE - REP. THOMPSON

HB 1725 PITTSBORO DEANNEXATION - REP. HACKNEY

SB 1114 BADIN CHARTER - SEN. PLYLER

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance Comm — 7-30-02

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lori Carter	NC Budget & Tax Center
[redacted]	[redacted]
Angi Hamm	MTE
David Meredith	NC State Grange
Jim Blackburn	NC Association of County Commissioners
John Bailey	NCDOR
Pete Rodda	Forsyth Co Tax Assessor/Collector
Andy Romanet	NCLM
Shayna Waites	intern
Sam McEwen	NCDOR
Alice Worsley	NCDOR

Sharon Matthews	DOT - DMV
Diane Johnson	DMV - Registration
	Capital Area MPO
V.L McBride	
	Hickory City
John Metteyer	GOO Office
Helen Lipina	Meck. County
Brian Francis	Meck City
	NCRA

7/30

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1114 A BILL TO BE ENTITLED AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE.

☐ 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 House 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1114

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1114-PCS6888-SVx-77

Short Title: Badin Charter/Norman Boundaries. (Local)

Sponsors:

Referred to:

May 29, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE AND TO SET OUT THE BOUNDARIES OF THE TOWN OF NORMAN.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5.3 of the Charter of the Town of Badin, being Chapter 894, Session Laws of 1989, as rewritten by Section 1 of Chapter 827, Session Laws of 1991 and S.L. 2000-36, is repealed.

SECTION 2. Section 2 of Chapter 74 of the Private Laws of the 1913 Extra Session reads as rewritten:

"Sec. 2. That the corporate limits of said town shall be as follows: ~~Beginning at a stake on Montgomery and Richmond County line road, J. E. Truse's corner, and runs thence as Truse's line south twenty-two east three thousand feet to a stake in his line, pine stump and green pine pointers; thence south seventy-six and one-tenth west two thousand six hundred and forty feet to a stake in east edge of little swamp, pine and black gum pointers; thence north twenty-two west three thousand five hundred and fifty feet to a stake; thence north forty-one west one thousand three hundred and twenty feet to Lindsay Freeman's corner, stake by pine being on gravelly knoll; thence north forty-five east four hundred feet to County Line Road as before described; thence as said road south fifty-nine east one hundred feet, south fifty-two and one-half six hundred and fifty feet, north eighty-nine east nine hundred and seventy-eight feet and south seventy-nine east nine hundred and fifty feet to beginning.~~Beginning for reference at North Carolina Grid monument 'NORBAT' said monument having North Carolina NAD 83 grid coordinates of north = 519,475.12 feet and east = 1,782,526.53 feet; thence runs N.01 – 45'53".W – 231.89 feet to a 'P.K.' nail situate at the center intersection of U.S. Highway #220 and State Road #1533, the true point of beginning of this described tract; thence runs with the center of the old county line road (now abandoned) as follows: S.57 – 02'07".E – 197.08 feet to an iron stake, S.57 – 50'38".E – 780.33 feet to an iron stake,

S.47 – 09'26".E – 159.67 feet to an iron stake, S.59 – 37'02".E – 117.27 feet to an iron stake, S.83 – 39'51".E – 80.82 feet to an iron stake, N.84 – 37'24".E – 165.72 feet to an iron stake, N.84 – 10'34".E – 548.94 feet, thence continues with and beyond the center of the abandoned old county line road, S.81 – 44'35".E – 1041.00 feet to a railroad spike in the center of State Road # 1321; thence runs S.22 – 09'14".E – 747.78 feet to the center of State Road #1490; thence runs S.22 – 56'07".E – 2210.30 feet; thence runs S.63 – 07'56".W – 3137.98 feet; thence runs N.26 – 52'04".W – 6603.89 feet to a 'P.K.' nail situate in the center of State Road #1533; thence runs with the center of State Road #1533, S.61 – 24'39".E – 2021.00 feet to the true point of beginning and containing 332.819 acres."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 1

SENATE BILL 1114

Short Title:	Badin Charter.	(Local)
Sponsors:	Senator Plyler.	
Referred to:	Finance.	

May 29, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CHARTER OF THE TOWN OF BADIN A PROVISION ON THE AD VALOREM TAX RATE.

The General Assembly of North Carolina enacts:

SECTION 1. Section 5.3 of the Charter of the Town of Badin, being Chapter 894, Session Laws of 1989, as rewritten by Section 1 of Chapter 827, Session Laws of 1991 and S.L. 2000-36, is repealed.

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

SENATE BILL 1114:
Badin Charter

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Plyler
Date:	July 30, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1114 removes a provision from the charter of the Town of Badin that prohibits the Town Council from increasing the property tax rate by more than 10% from the previous year's rate.***

The proposed committee substitute for Senate Bill 1114 contains an additional provision that amends the boundaries for the Town of Norman.

CURRENT LAW: Under the current charter for the Town of Badin, the ad valorem tax rate set by the Town Council shall not exceed the previous year's rate by more than 10%.

BILL ANALYSIS: Senate Bill 1114 repeals this provision in the town charter, which effectively removes the current cap on increases in the property tax rate set by the Town Council.

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

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1523 A BILL TO BE ENTITLED AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1523
PROPOSED COMMITTEE SUBSTITUTE H1523-PCS7400-LA-79

Short Title: Amend Property Tax Laws. (Public)

Sponsors:

Referred to:

June 5, 2002

BE ENTITLED

AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-357(b)(2) reads as rewritten:

"(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check, whichever is greater, subject to a ~~minimum of one dollar ($1.00) and a~~ maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

SECTION 1.2. G.S. 105-358 reads as rewritten:

"**§ 105-358. ~~Partial~~ Waiver of penalties; partial payments.**

(a) Waiver. – A tax collector may, upon making a record of the reasons therefor, reduce or waive the ten percent (10%) penalty imposed on giving a worthless check under G.S. 105-357(b)(2).

(b) Partial Payments. – Unless otherwise directed by the governing body, the tax collector shall accept partial payments on taxes and issue partial payment receipts therefor.

When a payment is made on the tax for any year or on any installment, it shall first be applied to accrued penalties, interest, and costs and then to the principal amount of

the tax or installment. In its discretion, the governing body may prescribe by uniform regulation the minimum amount or percentage of tax liability that may be accepted as a partial payment."

SECTION 2. G.S. 105-317.1 is amended by adding a new subsection to read:

"(c) A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed."

SECTION 3. G.S. 105-322(g)(5) reads as rewritten:

"(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.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c)."

SECTION 4. Section 4 of S.L. 2001-506 reads as rewritten:

"**SECTION 4.** Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, ~~2002.~~2003. Sections 2 and 3 of this act become effective January 1, 2002, and apply to manufactured home title cancellations and to declarations

of intent, deeds, deeds of trust, and other instruments recorded after that date. The remainder of this act is effective when it becomes law."

SECTION 5.(a) G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

(1) Claimant agency. – Either of the following:
  a. A State agency.
  b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. – Any of the following:
  a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.
  b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.
  c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.
  d. Reserved for future codification purposes.
  e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:
    1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
    2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
    3. A successor program of one of these programs.

(3) Debtor. – An individual who owes a debt.

(4) Department. – The Department of Revenue.

(5) Reserved.

(6) Local agency. – A county, to the extent it is not considered a State agency, or a municipality.

(7) Net proceeds collected. – Gross proceeds collected through setoff against a debtor's refund minus the collection assistance ~~fee retained by the Department.~~fees provided in G.S. 105A-13.

(8) Refund. – An individual's North Carolina income tax refund.

(9) State agency. – Any of the following:
  a. A unit of the executive, legislative, or judicial branch of State government.

b. A county, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act."

SECTION 5.(b) G.S. 105A-5 reads as rewritten:

"**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the ~~debt and~~ debt, that the agency intends to apply the debtor's refund against the ~~debt.~~debt, and that a collection assistance fee of fifteen dollars ($15.00) will be added to the debt if it is submitted for setoff. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. That portion of the amount returned that reflects the collection assistance ~~fee~~ fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance ~~fee~~ fees ~~retained by the Department~~provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 5.(c) G.S. 105A-13 reads as rewritten:

"**§ 105A-13. Collection assistance fees.**

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. ~~If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt.~~ The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed.

(c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars ($15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. – If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt."

SECTION 6. Sections 1, 1.2, and 6 of this act are effective when they become law. Section 4 is effective on and after June 30, 2002. Sections 5(a), 5(b), and 5(c) become effective January 1, 2003. The remaining sections are effective for taxes imposed for taxable years beginning on or after July 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ALA-64 [v.3]

Date July 30 ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Hackney

moves to amend the bill on page 1 lines 18-19, by adding a new section between those lines to read:

"**SECTION 1.2.** G.S. 105-358 reads as rewritten:

"**§ 105-358. ~~Partial~~ Waiver of penalties; partial payments.**

(a) Waiver. – A tax collector may, upon making a record of the reasons therefor, reduce or waive the ten percent (10%) penalty imposed on giving a worthless check under G.S. 105-357(b)(2).

(b) Partial Payments. - Unless otherwise directed by the governing body, the tax collector shall accept partial payments on taxes and issue partial payment receipts therefor.

When a payment is made on the tax for any year or on any installment, it shall first be applied to accrued penalties, interest, and costs and then to the principal amount of the tax or installment. In its discretion, the governing body may prescribe by uniform regulation the minimum amount or percentage of tax liability that may be accepted as a partial payment."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ALA-64 [v.3]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

Withdrawn

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1523-ALC-181 [v.1]

Date July 30 ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Hill

moves to amend the bill on page 5, lines 20-21,
by adding the following between the lines:

"**SECTION 5.1.(a)** G.S. 159-15 reads as rewritten:

'**§ 159-15. Amendments to the budget ordinance.**

Except as otherwise restricted by law, the governing board may amend the budget ordinance at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy the requirements of G.S. 159-8 and 159-13. However, except as otherwise provided in this section, no amendment may increase or reduce a property tax levy or in any manner alter a property taxpayer's liability, unless the board is ordered to do so by a court of competent jurisdiction, or by a State agency having the power to compel the levy of taxes by the board.

If after July 1 the local government receives revenues that are substantially more or less than the amount anticipated, the governing body may, before January 1, amend the budget ordinance to reduce or increase the property tax levy to account for the unanticipated increase or reduction in revenues.

The governing board by appropriate resolution or ordinance may authorize the budget officer to transfer moneys from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the governing board at its next regular meeting and shall be entered

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ALC-181 [v.1]

in the minutes.'

SECTION 5.1(b). This section is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

#4

Buck Amendment

EDITION No. 1st

H. B. No. 1523

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE July 30, 2002

Amendment No. 4
(to be filled in by Principal Clerk)

Rep.)
) _____
Sen.)

1 moves to amend the bill on page 2, line 29
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the year "2004" and
4 substituting the year "2003".
5
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19

SIGNED C Buckhouse

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

H1523-ALA-65 [v.3]

Date July 30 ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative

moves to amend the bill on page 5, lines 21 through 24, by rewriting those lines to read:

"**SECTION 6.** Sections 1, 1.2, and 6 of the act are effective when they become law. Section 4 is effective on and after June 30, 2002. Sections 5(a), 5(b), and 5(c) become effective January 1, 2003. The remaining sections are effective for taxes imposed for taxable years beginning on or after July 1, 2003."

SIGNED Shelly W Willingham
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1523

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

H1523-ALA-59 [v.2]

Date June 12 ,2002

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

Representative Luebke

moves to amend the bill on page 3, lines 42 and 43, by rewriting those lines to read:

"explain the basis for the agency's claim to the ~~debt and~~ debt, that the agency intends to apply the debtor's refund against the ~~debt.~~ debt, and that a collection assistance fee of fifteen dollars ($15.00) will be added to the debt if it is submitted for setoff. The notice must also inform the debtor that the".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1523

Short Title:	Amend Property Tax Laws.	(Public)
Sponsors:	Representatives Hill; Allen, Buchanan, Holliman, Jarrell, Luebke, and Wainwright.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-357(b)(2) reads as rewritten:

"(2) Penalty. – In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is twenty-five dollars ($25.00) or ten percent (10%) of the amount of the check, whichever is greater, subject to a ~~minimum of one dollar ($1.00) and a~~ maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

SECTION 2. G.S. 105-317.1 is amended by adding a new subsection to read:

"(c) A taxpayer who owns personal property taxable in the county may appeal the value, situs, or taxability of the property within 30 days after the date of the initial notice of value. If the assessor does not give separate written notice of the value to the taxpayer at the taxpayer's last known address, then the tax bill serves as notice of the value of the personal property. The notice must contain a statement that the taxpayer may appeal the value, situs, or taxability of the property within 30 days after the date of the notice. Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer to afford the taxpayer the opportunity to present any evidence or argument

regarding the value, situs, or taxability of the property. Within 30 days after the conference, the assessor must give written notice to the taxpayer of the assessor's final decision. Written notice of the decision is not required if the taxpayer signs an agreement accepting the value, situs, or taxability of the property. If an agreement is not reached, the taxpayer has 30 days from the date of the notice of the assessor's final decision to request review of that decision by the board of equalization and review or, if that board is not in session, by the board of county commissioners. Unless the request for review is given at the conference, it must be made in writing to the assessor. Upon receipt of a timely request for review, the provisions of G.S. 105-322 or G.S. 105-325, as appropriate, must be followed."

SECTION 3. G.S. 105-322(g)(5) reads as rewritten:

"(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.

d. To hear and decide all appeals relating to personal property under G.S. 105-317.1(c)."

SECTION 4. Section 4 of S.L. 2001-506 reads as rewritten:

"**SECTION 4.** Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, ~~2002.~~2004. Sections 2 and 3 of this act become effective January 1, 2002, and apply to manufactured home title cancellations and to declarations of intent, deeds, deeds of trust, and other instruments recorded after that date. The remainder of this act is effective when it becomes law."

SECTION 5.(a) G.S. 105A-2 reads as rewritten:

"**§ 105A-2. Definitions.**

The following definitions apply in this Chapter:

(1) Claimant agency. – Either of the following:

a. A State agency.

b. A local agency acting through a clearinghouse or an organization pursuant to G.S. 105A-3(b1).

(2) Debt. – Any of the following:

a. A sum owed to a claimant agency that has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for the sum.

b. A sum a claimant agency is authorized or required by law to collect, such as child support payments collectible under Title IV, Part D of the Social Security Act.

c. A sum owed as a result of an intentional program violation or a violation due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5.

d. Reserved for future codification purposes.

e. A sum owed as a result of having obtained public assistance payments under any of the following programs through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error:

1. The Work First Program provided in Article 2 of Chapter 108A of the General Statutes.
2. The State-County Special Assistance for Adults Program enabled by Part 3 of Article 2 of Chapter 108A of the General Statutes.
3. A successor program of one of these programs.

(3) Debtor. – An individual who owes a debt.

(4) Department. – The Department of Revenue.

(5) Reserved.

(6) Local agency. – A county, to the extent it is not considered a State agency, or a municipality.

(7) Net proceeds collected. – Gross proceeds collected through setoff against a debtor's refund minus the collection assistance ~~fee retained by the Department.~~ fees provided in G.S. 105A-13.

(8) Refund. – An individual's North Carolina income tax refund.

(9) State agency. – Any of the following:

a. A unit of the executive, legislative, or judicial branch of State government.

b. A county, to the extent it administers a program supervised by the Department of Health and Human Services or it operates a Child Support Enforcement Program, enabled by Chapter 110, Article 9, and Title IV, Part D of the Social Security Act."

SECTION 5.(b) G.S. 105A-5 reads as rewritten:

"**§ 105A-5. Local agency notice, hearing, and decision.**

(a) Prerequisite. – A local agency may not submit a debt for collection under this Chapter until it has given the notice required by this section and the claim has been finally determined as provided in this section.

(b) Notice. – A local agency must send written notice to a debtor that the agency intends to submit the debt owed by the debtor for collection by setoff. The notice must explain the basis for the agency's claim to the debt and that the agency intends to apply the debtor's refund against the debt. The notice must also inform the debtor that the debtor has the right to contest the matter by filing a request for a hearing with the local

agency, must state the time limits and procedure for requesting the hearing, and must state that failure to request a hearing within the required time will result in setoff of the debt.

(c) Administrative Review. – A debtor who decides to contest a proposed setoff must file a written request for a hearing with the local agency within 30 days after the date the local agency mails a notice of the proposed action to the debtor. A request for a hearing is considered to be filed when it is delivered for mailing with postage prepaid and properly addressed. The governing body of the local agency or a person designated by the governing body must hold the hearing.

If the debtor disagrees with the decision of the governing body or the person designated by the governing body, the debtor may file a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. The petition must be filed within 30 days after the debtor receives a copy of the local decision. Notwithstanding the provisions of G.S. 150B-2, a local agency is considered an agency for purposes of contested cases and appeals under this Chapter.

In a hearing under this section, an issue that has previously been litigated in a court proceeding cannot be considered.

(d) Decision. – A decision made after a hearing under this section must determine whether a debt is owed to the local agency and the amount of the debt.

(e) Return of Amount Set Off. – If a local agency submits a debt for collection under this Chapter without sending the notice required by subsection (b) of this section, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. Similarly, if a local agency submits a debt for collection under this Chapter after sending the required notice but before final determination of the debt and a decision finds that the local agency is not entitled to any part of the amount set off, the agency must send the taxpayer the entire amount set off plus the collection assistance ~~fee~~ fees ~~retained by the Department.~~provided in G.S. 105A-13. That portion of the amount returned that reflects the collection assistance ~~fee~~ fees must be paid from the local agency's funds.

If a local agency submits a debt for collection under this Chapter after sending the required notice and the net proceeds collected that are credited to the local agency for the debt exceed the amount of the debt, the local agency must send the balance to the debtor. No part of the collection assistance ~~fee~~ fees ~~retained by the Department~~provided in G.S. 105A-13 may be returned when a notice was sent and a debt is owed but the debt is less than the amount set off.

Interest accrues on the amount of a refund returned to a taxpayer under this subsection in accordance with G.S. 105-266. A local agency that returns a refund to a taxpayer under this subsection must pay from the local agency's funds any interest that has accrued since the fifth day after the Department mailed the notice of setoff to the taxpayer."

SECTION 5.(c) G.S. 105A-13 reads as rewritten:

"§ 105A-13. Collection assistance fees.

(a) State Setoff. – To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars

($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. ~~If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt.~~ The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Repealed.

(c) Local Debts. – To recover the costs incurred by local agencies in submitting debts for collection under this Chapter, a local collection assistance fee of fifteen dollars ($15.00) is imposed on each local agency debt submitted under G.S. 105A-3(b1) and collected through setoff. The Department must collect this fee as part of the debt and remit it to the clearinghouse that submitted the debt. The local collection assistance fee does not apply to child support debts.

(d) Priority. – If the Department is able to collect only part of a debt through setoff, the collection assistance fee provided in subsection (a) of this section has priority over the local collection assistance fee and over the remainder of the debt. The local collection assistance fee has priority over the remainder of the debt."

SECTION 6. Sections 1 and 4 of the act are effective when they become law. Sections 5(a), 5(b), and 5(c) become effective January 1, 2003. The remaining sections are effective for taxes imposed for taxable years beginning on or after July 1, 2002.

HOUSE BILL 1523:
Amend Property Tax Laws

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Hill
Date:	July 30, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition, as amended		Committee Counsel

SUMMARY: **House Bill 1523 is a recommendation of the Revenue Laws Study Committee and contains changes to the property tax laws that were proposed by the North Carolina Association of Assessing Officers and the Department of Revenue. These changes:**

- **Authorize tax collectors to impose a $25 returned check fee or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.**
- **Set out the procedure and time limit for appeals of personal property value, situs, or taxability.**
- **Clarify that the board of equalization and review may continue to meet after it adjourns to hear and decide appeals relating to personal property.**
- **Change the effective date of the definition of "real property" as amended in S.L. 2001-506 (HB 253).**
- **Amend the Setoff Debt Collection Act in Chapter 105A of the General Statutes to allow local agencies to impose a $15 local collection assistance fee on each local agency debt collected through setoff. When the bill was previously discussed in House Finance on June 12, the Committee adopted an amendment to require that a debtor be given written notice that the fee will be added to the debt if it is submitted for setoff.**

House Bill 1523 was previously discussed in House Finance on June 12th. At that time, the bill was amended, as described above in the underlined sentence. No vote was taken on the bill as amended.

ANALYSIS: Section 1 of the Bill amends G.S. 105-357(b) regarding the penalty imposed on a worthless check given to pay taxes. Current law authorizes the tax collector to impose 10% of the amount of the check, subject to a minimum of $1 and maximum of $1,000. The Bill authorizes the tax collector to impose $25 or 10% of the amount of the check, whichever is greater, subject to a maximum of $1,000.

Section 2 of the Bill sets out the procedure and time limit for appeals of the value, situs, or taxability of personal property. The current statutory framework is oriented toward appeals of real estate tax values and does not specifically address appeals of personal property. Consequently, counties use different procedures and time limits for appeals of personal property. The Bill amends G.S. 105-317.1 to include the following:

- The appeal must be within 30 days after the date of the initial notice of value of the personal property. The tax bill will serve as notice of value if a separate written notice of value is not sent. The notice must set out the 30-day limit.

- Upon receipt of a timely appeal, the assessor must arrange a conference with the taxpayer and allow the taxpayer to present evidence or argument.
- Within 30 days after the conference, the assessor must give written notice of the assessor's decision. Notice is not required if the taxpayer accepts the value, situs, or taxability of the property.
- Within 30 days of notice of the assessor's final decision, the taxpayer may request review by the board of equalization and review or the board of county commissioners.

Section 3 of the Bill authorizes a county board of equalization and review to meet after its adjournment to hear appeals relating to personal property. Last session, the Revenue Laws Study Committee recommended that a county board of equalization and review be given the authority to 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. Cabarrus, Lincoln, and Stokes Counties already had this authority under local acts. The recommendation was enacted in S.L. 2001-139.

Section 4 of the Bill changes an effective date in S.L. 2001-506. Last session, the General Assembly made several changes to the laws regarding the classification of a manufactured home as real property. One of these changes was to amend the definition of "real property" in G.S. 105-273(13) of the property tax laws, by removing the requirement that a manufactured home have multiple sections in order to be considered real property. The amendment also clarified that a manufactured home would be considered personal property if it did not meet the following statutory conditions: has the moving hitch, wheels, and axles removed, and is placed upon a permanent foundation on land owned by the owner of the manufactured home. This definition change became effective for taxable years beginning on or after July 1, 2002. The Bill moves the effective date to taxable years beginning on or after July 1, 2004. The tax assessors have not been able to determine whether the manufactured homes in their county meet this definition and have requested an extension of the effective date.

Section 5 of the Bill amends the Setoff Debt Collection Act in Chapter 105A of the General Statutes to authorize the charge of a $15 collection assistance fee on each local agency debt collected through setoff. The Act currently authorizes the Department of Revenue to impose a collection assistance fee of no more than $15 on overdue tax debts collected through setoff against the debtor's refund. The Act also provides for optional usage of the Act by a local agency (county) that is owed a debt. The local agency must submit the debt through one of the following:

1. A clearinghouse that is established pursuant to an interlocal agreement and that has agreed to submit debts on behalf of any requesting local agency.
2. The North Carolina League of Municipalities.
3. The North Carolina Association of County Commissioners.

The Bill amends the Setoff Debt Collection Act to require the Department of Revenue to collect a $15 collection assistance fee on each local agency debt collected through setoff. The fee must be remitted by the Department to the clearinghouse that submitted the debt. Last year the N.C. Association of County Commissioners and the League of Municipalities entered into an

interlocal agreement to establish a clearinghouse for local debt collection. The clearinghouse is registered with the Department of Revenue as the North Carolina Local Government Debt Setoff Clearinghouse. The Association and League have also contracted with a third party to process and compile the local debts. The $15 collection assistance fee will be used to pay for the costs of collecting these debts.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1523 (1st Edition)

SHORT TITLE: Amend Property Tax Laws

SPONSOR(S): Rep. Hill

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	No General Fund Impact				
Local Governments	Potential Revenue Increase – See Assumptions and Methodology				
Setoff Debt Collection Clearinghouse	Potential Revenue Increase – See Assumptions and Methodology				
EXPENDITURES					
Local Governments	Potential Cost Savings – See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments, North Carolina Department of Revenue, Property Tax Division.

EFFECTIVE DATE: Sections 1 (worthless checks) and 4 (manufactured homes) are effective when they become law. The remainder becomes effective for taxes imposed on taxable years beginning on or after July 1, 2002.

BILL SUMMARY: This proposal makes several changes to the property tax law and is recommended by the Revenue Laws Study Committee, the North Carolina Association of Assessing Officers and the North Carolina Department of Revenue.

Section 1 addresses the returned check fee charged by tax collectors. Under current statute the collector can impose a 10% fee for returned checks, with a minimum of $1.00 and a maximum of $1,000. The proposal increases the minimum fee to $25.00. The 10% rate and the $1,000 maximum provisions are retained. Section 2 defines the procedures and time limits surrounding a property tax appeal of personal property taxes. Section 3 authorizes local boards of equalization and review to meet after their adjournment date to hear personal property appeals. Section 4 changes the effective date of several property tax changes made last session in regards to manufactured homes. Section 5 authorizes the Department of Revenue to collect a $15 collection assistance fee on each local debt collected through the Setoff Debt Collection program. The funds are to be forwarded to the North Carolina Local Government Debt Setoff Clearinghouse.

ASSUMPTIONS AND METHODOLOGY:

Section 1: Because the proposal increases the minimum amount charged by tax collectors for returned checks, local fee revenues will increase. Fiscal Research is unable to offer an exact estimate of the increase, although it is expected to be relatively small.

Section 2: The statutory procedure for property tax appeals is oriented towards real estate and does not specifically address how to handle motor vehicle appeals. As a result, counties use a variety of procedures and timelines. Because the bill only clarifies procedure, it is not expected to have a fiscal impact.

Section 3: This section is not expected to have a fiscal impact as it merely extends the time limit for appeals.

Section 4: During the 2001 session several changes were made regarding the classification of manufactured homes for property tax purposes. In particular, the statute laid out specific qualifications for a manufactured home to be considered real property. This included having multiple sections, being placed on a permanent foundation, and having several items (hitch, wheels, axles) removed from the home. The effective date for the changes was July 1, 2002. Since the legislation passed, many assessors have been unable to determine if all the manufactured homes in the county meet the new criteria. As a result, they are asking that the current effective date be delayed until July 1, 2004. Because some properties would continue to be valued as personal property for two extra years, some impact is expected on property taxes. However, Fiscal Research is unable to make a reliable estimate of the impact during that period.

Section 5: Under current law, counties and cities can submit debts for collection to the Department of Revenue as long as the request is forwarded through the League of Municipalities, the County Commissioners Association, or a clearinghouse established through interlocal agreement. However, when the government submits the debt for collection, they must absorb the $15 fee themselves. The proposal authorizes the Department of Revenue to collect the $15 fee from the delinquent payer. This fee does not apply to child support. The proposal will reduce the cost of debt collection for local governments, and will likely increase program usage. However, no firm estimate is available on the total financial impact for local governments.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: James D. Johnson

DATE: June 6, 2002

House Committee on Finance

Minutes
August 1, 2002

The House Committee on Finance met on Thursday, August 1, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, and Luebke; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, and Cunningham. The following Sergeant-at-Arms staff were present: Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included: Trina Griffin, Martha Walston, David Crotts, Linda Millsaps, Canaan Huie, Martha Harris, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Visitor Registration Sheet and Agenda are attached and incorporated as a part of these minutes.

Chairman Allen called the meeting to order and recognized Pages Thomas Packer of Nash County, sponsored by Rep. Arnold; Jonathan Hammill of Gaston County, sponsored by Rep. Rayfield; Carolina Batchelor of Mecklenburg County, sponsored by Speaker Black; and Nan Yang of Wake County, sponsored by Rep. Weiss.

Representatives Gregg Thompson and Ruth Easterling were recognized to explain HB 1736, A BILL TO BE ENTITLED AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO ISSUE A RETIRED LEGISLATOR SPECIAL LICENSE PLATE. Representatives Thompson and Easterling stated that the bill would authorize the Division of Motor Vehicles to issue a special license plate to any former member of the General Assembly who is receiving or is eligible to receive benefits under the Legislative Retirement System. In answer to questions from the members, they explained that the bill does not require 300 applications before the plate is issued, and legislators must serve at least three terms before being eligible for this special plate. Upon motion of Rep. Edwards, the bill was given a favorable report. Copies of the Bill and Bill Summary are attached as part of these minutes.

The next order of business was HB 1734, A BILL TO BE ENTITLED AN ACT TO RAISE THE INVESTMENT THRESHOLD FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO ESTABLISH TIERED RATES FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO MODIFY THE WAGE STANDARD FOR THE CREDIT FOR WORKER TRAINING; TO MODIFY THE WAGE STANDARD FOR ENTERPRISE TIER ONE AND TWO COUNTIES; TO MODIFY THE WAGE STANDARD FOR TAXPAYERS WITH A TAX YEAR OTHER THAN A CALENDAR YEAR; TO TREAT CERTAIN PARCELS OF LAND PARTIALLY

LOCATED IN A DEVELOPMENT ZONE AS IF THE ENTIRE PARCEL WERE LOCATED WITHIN THE DEVELOPMENT ZONE; TO ENACT A JOB DEVELOPMENT INVESTMENT GRANT PROGRAM TO PROVIDE ECONOMIC STIMULUS, TO CREATE JOBS, AND TO AID IN THE DEVELOPMENT OF BUSINESS AND INDUSTRIAL PROJECTS AND EXPANSIONS IN NORTH CAROLINA; TO MODIFY THE INDUSTRIAL DEVELOPMENT FUND TO ALLOW FOR EXPENDITURES RELATED TO TELECOMMUNICATIONS AND BROADBAND LINES AND EQUIPMENT AND TO ALLOW FOR EXPENDITURES FROM THE UTILITY ACCOUNT IN ENTERPRISE TIER THREE AREAS; AND TO MAKE A TECHNICAL CORRECTION REGARDING THE AUTHORITY OF A LOCAL GOVERNMENT TO LEVY A PROPERTY TAX FOR ECONOMIC DEVELOPMENT. Upon motion of Representative Buchanan, the Proposed Committee Substitute (PCS) for HB 1734 was adopted for discussion.

Rep. Bill Owens, as principal sponsor of the Bill, explained that there are two main components of this bill: 1) changes to the Bill Lee Act that would affect the credit for investing in machinery and equipment, the wage standard, and the definition of a development zone, and 2) the establishment of a new economic development program that would allow a three-member committee to award grants to businesses, based on income tax withholdings from new jobs created by the businesses. The three-member committee would be made up of the Secretary of Revenue, Secretary of Commerce, and the State Budget Officer.

During discussion, questions raised by Committee members were answered by staff and by Commerce Secretary James T. Fain and Don Hobart, also with Commerce.

Amendment No. 1. Representative Holliman said he did have some concerns about the tier categories and was recognized to send forth an amendment to the bill that would add four new members to the committee: two appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. Rep. Holliman moved for its adoption. By Roll Call Vote, the amendment failed 18 to 9.

Amendment No. 2. Representative Hackney sent forth an amendment that would add the following phrase between lines 11 and 12 on page 9: "(6) Whether the project utilizes existing infrastructure and resources in the community." By motion of Representative Hackney, the Amendment was adopted.

Representative Buchanan moved to give the PCS a favorable report, and an unfavorable report to the original bill, and recommended that the PCS be re-referred to the Committee on Appropriations.

Because of time constraints, no action was taken on Representative Buchanan's motion, and Chairman Allen adjourned the meeting at 9:50 A.M. and announced that the

Committee would meet again fifteen minutes after the 10:00 o'clock House Session to continue discussion of HB 1734.

Respectfully submitted,

Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

House Bills 1736 and 1734
Committee Reports
Visitor Registration Sheet

AGENDA

House Finance Committee

August 1, 2002
8:30 A.M.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1736 RETIRED LEGISLATOR LICENSE PLATE - REP. THOMPSON

HB 1734 NC ECONOMIC RECOVERY AND COMPETITIVENESS ACT – REP. OWENS, REP. ALLEN

ADJOURNMENT

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie English	Charlotte Chamber
Don Carrington	John Locke Foundation
PEERI MORGAN	NFIB
Ann Duncan	NFIB
Alice Garland	EC
DAN CREECH	GOVS OFFICE
Joe Stewart	Dept of State Treasurer
Angie Converse	Helms Mullass & Dickson
Janice Burke	N.C. Dept. of State Treasurer
Jim Blackburn	friend of Janice Burke
CHAS. ARCHER	NCLM " "
Beau Mills	NC Metropolitan Coalition
MARK SCHLOSSNER	Wilmington Chamber
MOHAMMAD JENAHIAN	HTA, CHARLOTTE
Brian Francis	Mecklenburg County
Ken Atkins	Wake County Economic Development
Ed TURLINGTON	Progress Energy
Omid Nasab	Hunton & Williams
Elaine Myers	NC BTC
Hal Weiler	NCAEC
Mike Seaton	Capitol Group
John Pitt	NCEDA
Chris Fitzsimon	Common Sense
Ken Caldwell	NC BTC
Stewart Dickinson	NC DOC
Andy Fisher	NC DOC
Jonathan Tait	NC DOR
Tom Hammond	NC Eastern Region

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diana Williams	House & Senate
Coleman Mehta	Rep Gibson
Andrea Schrag	Rep. Alexander
[illegible]	NC State Univ
Kacy Hunt	Rep. Wainwright
Jim Fain	DOC
Shellie Jennings	NCEDA
Keshia Kavanaugh	NCCBI
Ron Aycock	Co. Com. Assoc.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1736 A BILL TO BE ENTITLED AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO ISSUE A RETIRED LEGISLATOR SPECIAL LICENSE PLATE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

HOUSE BILL 1736

Short Title:	Retired Legislator License Plate.	(Public)
Sponsors:	Representatives Thompson; and Easterling.	
Referred to:	Finance.	

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE DIVISION OF MOTOR VEHICLES TO ISSUE A RETIRED LEGISLATOR SPECIAL LICENSE PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(36a1) Retired Legislator. – Issuable to a former member of the North Carolina General Assembly who is receiving or is eligible to receive benefits under Article 1A of Chapter 120 of the General Statutes. The plate shall bear the Great Seal of the State of North Carolina, surrounded by the words 'State Senate' or 'State House of Representatives', as appropriate, and the word 'Retired' below the Seal."

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

HOUSE BILL 1736:
Retired Legislator License Plate

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Thompson
Date:	July 30, 2002	**Analysis by:**	Martha Walston
Version:	1st Edition		Committee Counsel

SUMMARY: House Bill 1736 would direct the Division of Motor Vehicles to issue a special license plate to a former member of the North Carolina General Assembly who is receiving or is eligible to receive benefits under the Legislative Retirement System. The bill does NOT require 300 applications before the plate may be issued.

CURRENT LAW: The General Assembly has authorized the Division of Motor Vehicles to issue many different registration plates. Most of these plates are not issued until at least 300 applications are received. The DMV has issued at least 87 special license plates. Several of these plates are issuable to the following retired persons: military retiree, retired Highway Patrol, retired sheriff, and retired magistrate. Also under G.S. 20-79.6, the following retired members of the judiciary are eligible for special plates: justices and judges of the North Carolina court system and Justices of the U.S. Supreme Court and U. S. Circuit Court of Appeals if they are residing in North Carolina.

Applicants for the above special license plates issuable to retired persons must pay the regular motor vehicle registration plate plus an additional $10 fee. The additional $10 fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this account, $525,000 is annually appropriated to provide operating assistance for seven Visitor Centers. The Centers are located in Brunswick, Camden, Carteret, Caswell, Macon, Tyrell, and Watauga Counties. The remaining revenue in the account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Health and Human Services to promote travel accessibility for disabled persons in the State (17%).

BILL ANALYSIS: House Bill 1736 directs the DMV to issue a special license plate to a former member of the North Carolina General Assembly who is receiving or is eligible to receive benefits under the Legislative Retirement System.[1] The plate will bear the Great Seal of the State surrounded by the words "State Senate" or "State House of Representatives" and the word "Retired" below the Seal. There is no 300-application requirement for issuance. This proposed special plate is similar to the current special plate issuable to a member of the North Carolina

[1] Under G.S. 120-4.11, the following members are eligible for membership in the retirement system: (1) members of the General Assembly who serve on and after June 15, 1983; and (2) former members of the General Assembly who served prior to June 15, 1983; and who elect to transfer current and future entitlements, or contributions, from the Legislative retirement Fund established by Chapter 1269 of the 169 Session Laws; or who have five or more years of service as a member of the General Assembly.

General Assembly. The plate for a current member bears the Great Seal, the word "Senate" or "House" and the member's assigned seat number.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1736 (1st Edition)

SHORT TITLE: Retired Legislator License Plate

SPONSOR(S): Rep. Thompson and Rep. Easterling

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Highway Fund					
Special Registration Plate Account	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: This bill authorizes the Division of Motor Vehicles (DMV) to issue a retired legislator special license plate. This plate can be issued to a former member of the North Carolina General Assembly who is receiving or is eligible to receive retirement benefits under Article 1A of Chapter 120. The bill also addresses the appearance of the plate.

ASSUMPTIONS AND METHODOLOGY: In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a retired legislator plate pays $10 that is deposited into the Special Registration Plate Account. There is no increase in the Highway Fund since the special plate applicants pay the same $20 vehicle registration fee that they were paying for a regular license plate.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex.

Records at the state retirement system offices indicate that there are currently 236 former legislators who are receiving or qualify for benefits. If all 236 former members request plates the special plate account would see an increase of $2260 (236 members x $10, less the $100 to design a new plate). However, because the Fiscal Research Division cannot estimate the number

of these former legislators that will request a plate, no accurate fiscal estimate is possible on the bill.

SOURCES OF DATA: NC Retirement System

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: James D. Johnson

DATE: July 22, 2002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1734
PROPOSED COMMITTEE SUBSTITUTE H1734-PCS4271-LYxf-47

Short Title: NC Economic Stimulus and Job Creation Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO RAISE THE INVESTMENT THRESHOLD FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO ESTABLISH TIERED RATES FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO MODIFY THE WAGE STANDARD FOR THE CREDIT FOR WORKER TRAINING; TO MODIFY THE WAGE STANDARD FOR ENTERPRISE TIER ONE AND TWO COUNTIES; TO MODIFY THE WAGE STANDARD FOR TAXPAYERS WITH A TAX YEAR OTHER THAN A CALENDAR YEAR; TO TREAT CERTAIN PARCELS OF LAND PARTIALLY LOCATED IN A DEVELOPMENT ZONE AS IF THE ENTIRE PARCEL WERE LOCATED WITHIN THE DEVELOPMENT ZONE; TO ENACT A JOB DEVELOPMENT INVESTMENT GRANT PROGRAM TO PROVIDE ECONOMIC STIMULUS, TO CREATE JOBS, AND TO AID IN THE DEVELOPMENT OF BUSINESS AND INDUSTRIAL PROJECTS AND EXPANSIONS IN NORTH CAROLINA; TO MODIFY THE INDUSTRIAL DEVELOPMENT FUND TO ALLOW FOR EXPENDITURES RELATED TO TELECOMMUNICATIONS AND BROADBAND LINES AND EQUIPMENT AND TO ALLOW FOR EXPENDITURES FROM THE UTILITY ACCOUNT IN ENTERPRISE TIER THREE AREAS; AND TO MAKE A TECHNICAL CORRECTION REGARDING THE AUTHORITY OF A LOCAL GOVERNMENT TO LEVY A PROPERTY TAX FOR ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.9(a) and (c) read as rewritten:

"(a) General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to ~~seven percent (7%)~~ the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Machinery

and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service. The applicable percentage is as follows:

Area Enterprise Tier	Applicable Percentage
Tier One	7%
Tier Two	7%
Tier Three	6%
Tier Four	5%
Tier Five	4%

...

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service at more than one establishment in an enterprise tier during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service at each establishment. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	~~500,000~~1,000,000
Tier Five	~~1,000,000~~2,000,000"

SECTION 2. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the credit for worker training~~ in an enterprise tier three, four, or five area if, for the calendar year the jobs are ~~created or the worker training is provided,~~created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft ~~facility, or the credit for substantial investment in other property~~facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if

those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to ~~the applicable percentage times~~one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. ~~The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%).~~ The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 3. G.S. 105-129.3A is amended by adding a new subsection to read:

"(d) Parcel of Property Partially in a Development Zone. – For the purposes of this section, a parcel of property that is located partially within a development zone is considered entirely within the development zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the development zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 4. In addition to heightening the incentive effect of the William S. Lee Quality Jobs and Business Expansion Act in lower-tiered counties, the changes in Section 1 of this act are intended to reduce the cost of the Act and make more revenues available to the State of North Carolina in future years. It is the intent of the General Assembly in making these changes to provide a source of funds that could be used in future years to support other, more targeted economic development programs aimed at helping create new jobs in North Carolina.

SECTION 5.(a) Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2F.

"Job Development Investment Grant Program.

"**§ 143B-437.44. Legislative findings and purpose.**

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.

(7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged.

"**§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.51.

(2) Base years. – The first two complete calendar years following the effective date of an agreement.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.48.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base years or in subsequent years of a grant.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide and who is first employed on the project that is the subject of an agreement. The term includes an employee rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.

(8) Related member. – Defined in G.S. 105-130.7A.

(9) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes.

"**§ 143B-437.46. Job Development Investment Grant Program.**

There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee shall develop criteria to be used in determining whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing

development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

"**§ 143B-437.47. Eligible projects.**

(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10
Tier Four	20
Tier Five	20

(b) Nonretail Facilities. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.52 a certification that the business continues to provide health insurance for all full-time employees of the project with respect to which the grant is made. If the business ceases to provide health insurance to all full-time employees of the project with respect to which a grant is made, the Committee may amend or terminate the agreement as provided in G.S. 143B-437.53.

"**§ 143B-437.48. Economic Investment Committee established.**

(a) Membership. – The Economic Investment Committee is established. The Committee consists of the following members:

(1) The Secretary of Commerce.

(2) The Secretary of Revenue.

(3) The Director of the Office of State Budget and Management.

(b) Unanimous Decision Required. – The Committee may act only upon a unanimous decision of its members.

"**§ 143B-437.49. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The most recent audited financial statements of the business and any other financial information the Committee considers necessary.

(4) The number of eligible positions proposed to be created during the base years and thereafter and the salaries for these positions.

(5) An estimate of the total withholdings.

(6) Certification that the business will provide health insurance to all full-time employees of the project.

(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.

(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.

(9) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this section among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before October 31 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding fiscal year, including the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding fiscal year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(4) The wage levels of eligible positions created by projects with respect to which grants were awarded.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee to implement this Part and any changes in those criteria from the previous fiscal year.

(d) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year.

"**§ 143B-437.50. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible

positions. The percentage shall be no less than ten percent (10%) and no more than eighty percent (80%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.

(5) The total dollar investment the business is making in the project.

(b) The term of the grant shall not exceed 15 years starting with the first year a grant is made.

(c) The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds eighty percent (80%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

"**§ 143B-437.51. Community economic development agreement.**

Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.

(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.

(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.

(4) The amount of the grant based on a percentage of withholdings.

(5) A method for determining the number of new employees hired during a grant year.

(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.

(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.

(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.

(9) A provision that permits the Committee to amend an agreement pursuant to G.S. 143B-437.53.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.53, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.53, the agreement is binding and constitutes a pledge and a continuing appropriation of the amount of the grant.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.53.

"**§ 143B-437.52. Grant recipient to submit records.**

(a) No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a copy of its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Committee shall determine the allocation of the fee imposed by this section among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

"**§ 143B-437.53. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee, the Committee may amend the agreement to reduce the amount of the grant or the term of

the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee may terminate the agreement.

"**§ 143B-437.54. Disbursement of grant.**

A business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.50(d). The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee.

"**§ 143B-437.55. Transfer to Industrial Development Fund.**

At the time the State Controller remits a check to a business under G.S. 143B-437.54, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.50(d).

"**§ 143B-437.56. Sunset.**

The authority of the Committee to enter into new agreements expires January 1, 2006."

SECTION 5.(b) In developing criteria under G.S. 143B-437.46 for the awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes and under G.S. 143B-437.50 for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee may consider criteria that address the following:

(1) Factors related to the economic impact of the project, such as the following:

a. Impact on gross regional product and gross State product.

b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.

c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.

d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.

e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.
h. The economic demands the project is expected to place upon the community or communities in which it will locate.

(2) Factors related to the strategic importance of the project to the State, region, or locality, such as the following:
a. The extent to which the project builds or enhances an industrial cluster.
b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.
c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.
d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
e. The extent to which the project can be expected to contribute significantly to and support the local community.

(3) Factors related to the quality of jobs, such as the following:
a. The wage level and status of the jobs to be created.
b. The quality and value of benefits offered by the company.
c. The potential for employee advancement.
d. The extent of training programs offered by the company.
e. The sustainability of the jobs in the future.
f. The workplace safety record of the company.

(4) Factors related to the quality of the industry and the project, such as the following:
a. The nature of the project and the projects' relationship to the larger business of the company.
b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.
c. The long-term prospects for growth at the project site or sites.
d. The long-term prospects for growth of the company and the industry within the United States.
e. The financial stability of the company associated with the project.

(5) Factors related to the environmental impact of the project, such as the following:
a. The nature of the business to be conducted.
b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

(6) Other factors that the Economic Investment Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2F of Article 10 of Chapter 143B of the General Statutes.

SECTION 6.(a) G.S. 143B-437.01(a)(1) reads as rewritten:

"(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity."

SECTION 6.(b) G.S. 143B-437.01(b1) reads as rewritten:

"(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier ~~one and tier two~~one, two, and three areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project."

SECTION 7. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(28) To provide to the Economic Investment Committee established pursuant to G.S. 143B-437.48 information necessary to implement Part 2F of Article 10 of Chapter 143B of the General Statutes."

SECTION 8. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(10) The Economic Investment Committee in developing guidelines for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes."

SECTION 9.(a) G.S. 153A-149(c)(10b) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

...

(10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

SECTION 9.(b) G.S. 160A-209(c)(10b) reads as rewritten:

"(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

...

(10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

SECTION 10. Section 1 of this act is effective for taxable years beginning on or after January 1, 2003, and applies to business activities that occur on or after January 1, 2003, but does not apply to business activities that occur on or after January 1, 2003, that are subject to a letter of commitment signed under G.S. 105-129.9 before January 1, 2003. Sections 2 and 3 of this act are effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

Amendment #1

(Revised 6-02)

failed

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		
Allen		✓	Weiss	✓	
Blust	✓		Willingham		✓
Buchanan	✓		Wilson		✓
Capps	✓		Womble	✓	
Cox		✓			
Decker					
Dedmon		✓			
Eddins		✓			
Edwards		✓			
Gibson		✓			
Gray		✓			
Hackney (Speaker Pro Tem)		✓			
Hill		✓			
Holliman	✓				
Hurley					
Jarrell		✓			
Johnson		✓			
Luebke	✓				
McComas					
McCombs		✓			
McMahan		✓	Ex officio Members		
Morris			Majority Leader Baddour		
Pope	✓		Majority Whip Earle		
Rayfield		✓	Majority Whip Cunningham		✓
Starnes	✓				
				9	16

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS 4271-LYxf-47

H. B. No. 1734 DATE August 1, 2002

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

COMMITTEE SUBSTITUTE _____

Rep.) Holliman
)
Sen.)

moves to amend the bill on page 7, line 5 and 6

( ) WHICH CHANGES THE TITLE

by adding the following between those lines

"(4) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate

(5) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives."

NO yes No

9 18

SIGNED _____

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE August 1, 2002

Amendment No. 2
(to be filled in by Principal Clerk)

(Rep.) Hackney
Sen.)

moves to amend the bill on page 9, lines 11-12

( ) WHICH CHANGES THE TITLE

by adding the following between the lines:

"(6) Whether the project utilizes existing infrastructure and resources in the community."

SIGNED Hackney

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Bill 1734:
NC Economic Stimulus and Job Creation Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Reps. Owens and Allen
Date:	July 31, 2002	**Analysis by:**	Y. Canaan Huie
Version:	H1734-CSLYfx-47		Staff Attorney

SUMMARY: ***There are two main components to this bill: changes to the Bill Lee Act and the establishment of a new economic development program. There are different effective dates for the various parts of the bill.***

BACKGROUND: The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case. In 1999, the General Assembly extended the 2002 sunset to 2006.

ANALYSIS: Bill Lee Act Changes. Sections 1 through 3 of this bill make significant changes to the Bill Lee Act. These changes affect the credit for investing in machinery and equipment, the wage standard, and the definition of a development zone.

Machinery and Equipment. Under current law, a taxpayer is allowed a credit for machinery and equipment placed into service during a taxable year that exceeds the applicable threshold based on the location where the machinery and equipment is placed into service. The amount of the credit is equal to 7% of the cost of the machinery and equipment in excess of the applicable threshold. Section 1 of this act makes two changes to this credit. First, the amount of the credit is reduced in enterprise tiers three, four, and five. In those areas, the amount of the credit is reduced to 6%, 5%, and 4%, respectively, of the cost of the machinery and equipment in excess of the applicable threshold. Second, the amount of the threshold is increased in enterprise tiers four and five. In enterprise tier four, the threshold is increased from $500,000 to $1,000,000. In enterprise tier five, the threshold is increased from $1,000,000 to $2,000,000.

Wage standard. Under current law, a taxpayer is eligible for a credit under the Bill Lee Act only if the jobs provided by the taxpayer meet a wage standard. The wage standard is 110% (100% in an enterprise tier one area) of the applicable average weekly wage. The jobs that are included in calculating the wage standard vary depending on the particular credit.

Section 2 of this bill makes three substantive changes to the wage standard. First, this section eliminates the wage standard in enterprise tier one and two areas.

Second, this act eliminates the wage standard for the credit for worker training. In order to be eligible for the credit for worker training, the employee who is being retrained must either (i) occupy a job for which the taxpayer is eligible to claim a credit for creating jobs, or (ii) be trained to operate machinery and equipment for which a taxpayer is eligible to claim a credit for investing in machinery and equipment. Thus, the jobs for which the credit for worker training may be claimed have already been included in a larger group of jobs that has met the wage standard. Often the specific jobs for which worker training is required are lower-paying jobs that could not themselves meet the wage standard. This change allows the credit for worker training to be taken by more taxpayers.

Third, this act makes an allowance for a taxpayer that has a taxable year other than a calendar year. To perform the wage standard test, the taxpayer compares the average weekly wage of certain jobs to the wage standard determined on an annual basis. The test is performed for the calendar year that jobs are created or for which worker training is provided. However, performing a wage standard test based on a calendar year is not feasible because many companies have taxable years that do not coincide with the calendar year. Consequently, the taxpayer can engage in activity that qualifies for a credit during a taxable year that spans two calendar years. If the taxpayer creates jobs in different calendar years, it must compute the combined average weekly wage of the 80 jobs created during its taxable year and compare this average to the county wage standard to determine if it qualifies for a tax credit. It cannot however, compute this average "for the calendar year the jobs are created" as required by the current statute because the jobs are created over the course of two calendar years. Under this bill, the wage standard test would be based on the taxpayer's taxable year and not the calendar year. When a taxable year spans two calendar years, the applicable wage standard is that of the earlier calendar year. In addition to correcting a practical problem, this change generally will be favorable for taxpayers because county wage standards generally trend upward.

Development zones. In 1998, the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate or expand in development zones, which are economically distressed areas located within cities. The statutory conditions for qualifying as a development zone were designed to target only these relatively small, economically distressed areas. The statutory conditions contained loopholes, however, that allowed large areas outside of cities to qualify, even if they were not economically distressed throughout. In 1999, the General Assembly moved to close those loopholes.

Current law defines a development zone as an area that meets all of the following conditions: (1) consists of one or more contiguous census tracts, block groups, or both, (2) has a population of 1,000 or more, at least 20% of whom are below the poverty level, (3) is located at least partly in a city with a population over 5,000, (4) every census tract and census block group in the zone must be located in whole or in part within the primary corporate limits of the city, (5) every census tract and census block group in the zone must have more than 10% of its population below the poverty level, or must be immediately adjacent to a tract or group that has more than 20% of its population below the poverty level, and (6) none of the census tracts or census block groups may be located in another development zone.

This act amends the definition of development zone to include all of a parcel of land that is located partially within the zone if all of the following conditions are met:

- At least 50% of the parcel is located within the zone.
- The parcel was in existence and under common ownership prior to the previous decennial federal census.

- The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

The following enhanced incentives apply in development zones: If a business locates in a development zone, the wage standard it has to meet is the same as for tier one counties -- slightly lower than the standard for other counties under current law and eliminated entirely under Section 2 of this act. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

Jobs Development Investment Grant Program. Section 5 of this act creates a new economic development tool for new and expanding businesses in North Carolina. This tool would be used to attract businesses to the State by allowing a three-member committee to award grants to businesses. The amount of the grants would be based on income tax withholdings from new jobs created by the businesses.

Which projects are eligible for a grant? In order to be eligible for a grant under this Part, the business must create a minimum number of new jobs. The number of new jobs that must be created varies based on the enterprise tier designation of the location where the jobs will be located. For projects located in enterprise tiers one through three, the project must create at least 10 new full-time positions. For projects located in enterprise tiers four and five, the project must create at least 20 new full-time positions. If a project is located in more than one location, the enterprise tier designation of the location in the highest enterprise tier area determines the number of new jobs that must be created.

As with the Bill Lee Act, a business must provide health insurance for all full-time jobs associated with the project in order to be eligible for this new program. The test is the same as under the Bill Lee Act – the business must, for all full-time employees of the project, pay at least 50% of the premiums for health insurance that meets at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.

Unlike under the Bill Lee Act, there are few restrictions based on the industry in which the business is engaged. All facilities other than retail facilities are eligible for a grant under this Part.

More generally, the project must satisfy the following conditions in order to be eligible for a grant:

- The project will result in net new employment in the State.
- The project is economically sound and will benefit the people of the State by increasing employment opportunities and strengthening the State's economy.
- The project is consistent with economic development goals for the State.
- A grant is needed in order to secure the project for the State
- The total benefits of the project to the State outweigh the costs associated with the project.

How a grant is obtained? In order to obtain a grant under this Part, the business must apply to the Economic Investment Committee for consideration. The Economic Investment Committee is a three-member committee consisting of the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. The Committee may only act upon unanimous consent. The application for a grant must be under oath, be on a form prescribed by the Committee, and contain any information required by the Committee. At a minimum, the application must contain the following information:

- The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site.

- The names and addresses of the principals or management of the business, and the nature of the business, and the form of business organization under which the business is operated.
- The most recent audited financial statements of the business.
- The number of new jobs proposed to be created by the project.
- An estimate of the withholdings of personal income tax of employees of the project.
- Information concerning other possible locations of the project, and the benefits, including tax benefits or grants, associated with locating the project at that other location.
- Information concerning other State grants for which the business is applying or that it expects to receive.

A group of related business involved in a project may submit a joint application for a grant under this Part.

Any application for a grant must be accompanied by a fee in the amount of $5,000. This fee will be allocated among the agencies responsible for evaluating the application (Department of Commerce, Department of Revenue, and the Office of State Budget and Management) in the discretion of the Committee.

The Committee will evaluate applications to determine which businesses shall receive grants under this Part. The awarding of a grant is solely in the discretion of the Committee. The Committee shall develop criteria for evaluating applications. These criteria shall take into consideration the economic impact of the project, the strategic importance of the project to the State, region, or locality, the quality of the jobs to be created, the quality of the industry and the project, and the environmental impact of the projects. The Committee is exempt from the rulemaking process in developing these criteria.

How is the amount of a grant determined? If the Committee approves a business's application, the Committee will then negotiate and enter into a community economic development agreement with the business. The agreement is a binding commitment on the part of the State to provide the grant for a set number of years, subject to the Committee's right to amend or terminate the agreement under certain limited circumstances. Each agreement shall include a description of the project, the term of the agreement, the number of positions expected to be subject to the grant and a method for determining the number of positions that are subject to the grant, and the amount of the grant as a percentage of the withholdings of personal income tax from eligible positions. The Committee has wide discretion in determining the percentage that determines the amount of a grant under an agreement. The Committee shall develop criteria to be used when negotiating the appropriate percentage. The Committee is exempt from the rulemaking process in developing these criteria. However, at a minimum, the following conditions apply:

- The amount of the grant may not be less than ten percent (10%) or more than eighty percent (80%) of the withholdings associated with new jobs at the project.
- The term of the grant shall not exceed 15 years.
- The percentage used to determine the amount of the grant shall be reduced by one-fourth for any eligible position located in an enterprise tier four or five area.
- Unless the Committee makes a specific determination that the grant should be calculated based on eligible positions created in any year during the term of the agreement, the amount of the grant shall be calculated based only on eligible positions created during the base years, the first two years, of the agreement.

- Unless the Committee makes an explicit finding otherwise, the total amount of all grants provided by the State may not exceed 80% of the withholding of eligible positions.

Use of funds? There are no restrictions on the use of the grant fund by the business. South Carolina has a similar grant program. Under the South Carolina program, grant funds may only be used for certain specific purposes, such as worker training, worker relocation, purchase or construction of real property, and construction or repairs to certain transportation-related real property.

The withholdings retained by the State shall be used in two different ways. First, the withholdings in excess of the percentage negotiated in the agreement shall flow to the General Fund.[1] Second, the withholdings that are included in the agreement, but that are excluded from the grant because the percentage was reduced by one-fourth because the eligible position is located in an enterprise tier four or five area, will be transferred to the Utility Account of the Industrial Development Fund. Under current law, funds in the Utility Account may be used to assist local governments in tiers one and two in constructing or improving utility lines or equipment (amendments to the law regarding the Industrial Development Fund and the Utility Account are discussed later in this summary).[2]

Follow-up on grantee businesses? This bill provides for monitoring of grantee businesses in several ways and allows the Committee to amend or terminate agreements if the business fails to live up to the terms of the agreement or the requirements of this new Part.

The business must submit annual reports to the Committee. At a minimum, the business must submit a copy of its federal and State income tax returns which show business and nonbusiness income, a report that shows withholdings, and a payroll report. This annual submission must also include any additional information that Committee considers necessary to implement the grant program. In addition, the Committee may audit at any time a business receiving a grant. This annual submission must be accompanied by a fee of $1,500. The Committee shall allocate the fee among the agencies responsible for evaluating the submission.

The Committee has a right to amend or terminate the agreement and to recapture all or part of a grant made in previous years under certain circumstances. If the business fails to meet or comply with any term of the agreement or with criteria developed by the Committee, the Committee, in it discretion, may amend the agreement. This amendment may take the form of a lower percentage being used to determine the amount of the grant or of a shorter term for the agreement. If the business fails to meet or comply with any term of the agreement or with criteria developed by the Committee for two consecutive years, the Committee, in its discretion, may terminate the agreement. In addition, in each agreement the Committee must include a provision describing the conditions that will lead to recapture of a grant made in an earlier year. The statute mandates that all agreements contain a provision allowing recapture if the business does

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1 Even though the maximum percentage that may be used to determine the amount of a grant is 80%, there may be no additional revenue from these positions that would flow to the General Fund. This is because most taxpayers over-withhold, meaning that more taxes are withheld than are actually due, resulting in a refund to the taxpayer. Because of this, a grant based on the maximum percentage of 80% could result in a net loss to the General Fund.

2 The following example will clarify this. Assume a project that is located in an enterprise tier five area is allowed a grant based on 80% of the withholdings of the eligible positions. Because those positions are located in an enterprise tier five area, that percentage is reduced by one-fourth, so that the business is allowed a grant equal to 60% of the withholdings of eligible positions. (80% multiplied by ¾ equals 60%.) Twenty percent of the withholdings of eligible positions would flow to the General Fund, 60% would be given to the business in the form of a grant, and 20% would be transferred to the Utility Account of the Industrial Development Fund.

not maintain operations at the project location or another location approved by the Committee for at least 150% of the term of the grant agreement.

Program evaluation. This bill would require the Committee to make annual reports regarding the program and the funding needed to implement the program. By October 31 of each year, the Committee must publish the following information:

- A listing of each agreement entered into during the previous fiscal year, the cost/benefit analysis conducted with respect to each agreement, a description of each project, and the amount of the initial grant.
- An update on the status of projects under agreements entered into in earlier fiscal years.
- The number, enterprise tier levels, and wage levels of eligible positions created by projects with respect to which grants were awarded.
- The amount of new income tax revenue received by the State related to the projects.
- The criteria developed by the Committee to implement the grant program and in changes in those criteria over the previous year.

In addition, the Committee shall conduct a study annually to determine the amount of funding needed to successfully implement the grant program. The results of that study must be reported to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1.

Finally, the authority of the Committee to enter into additional agreements expires as of January 1, 2006. This will allow the General Assembly an opportunity to review the program after it has been in effect for a few years in order to determine if the program is meeting its objections.

Miscellaneous changes associated with the program. Sections 7 and 8 of this bill provide exceptions to current law needed to implement the provision of the grant program.

Section 7 allows an exemption from the confidentiality requirements of the Department of Revenue. Generally, the Department of Revenue must keep confidential all information it receives in the course of administering the tax laws. There are numerous, specific exceptions to this requirement. This bill would allow the Department of Revenue to share information with the Economic Investment Committee relating to businesses that are applying for a grant or that are subject to an agreement.

Section 8 allows the Committee an exemption from the rulemaking process.

Industrial Development Fund changes. Section 6 of this bill makes two significant changes to the Industrial Development Fund and to the Utility Account, which is part of that Fund. The Industrial Development Fund provides assistance to local governments for improvements to infrastructure to enable the locality to attract new businesses. Usually, this assistance is provided to make general improvements, such as improvements to or development of industrial parks, and is not tied to luring a specific project.

First, the purposes for which funds in both the Fund and the Account may be used are expanded to allow expenditures for telecommunications and high-speed broadband lines and equipment.. Currently funds under both the Fund and the Account may be used for construction of and improvements to water, sewer, gas, and electricity lines and equipment. This change recognizes the growing importance to industry of telecommunications and high-speed broadband.

Second, under current law, funds in the Utility Account may be used to assist local governments located in enterprise tiers one and two only. This bill would expand the focus of the Account to allow funds in the Account to be used to assist local governments in enterprise tier three as well.

Property Tax Technical Correction. Section 9 of this act corrects a statutory reference in two laws dealing with the purposes for which a local government may levy a property tax.

DRAFT

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 1, 2002

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: HB 1734 (NC Economic Recovery and Competitiveness Act)
Proposed House Finance Committee Substitute

FISCAL IMPACT ($MIL.)

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

		FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES:						
Bill Lee Act Changes: State General Fund						
Machinery/Equip. Credit	-		3.64	7.27	10.91	14.54
Wage Test for Tiers 1 & 2	-		-.08	-.16	-.24	-.32
Worker Training Wage Test	-		-.11	-.11	-.11	-.11
			3.45	**7.00**	**10.56**	**14.11**
Job Creation Grant Program			"See Assumptions and Methodology"			

EXPENDITURES: The enactment of the bill is not expected to affect budget requirements of any of the affected agencies.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Commerce, Office of State Budget and Management

ISSUE BACKGROUND: The Bill Lee Act is the package of state tax incentives that was first adopted in 1996 and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research/development. The credits apply to activities undertaken by specifically named industrial classifications. For many of the credits, the counties of the State are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth. In general, the lower the tier of a county, the more favorable the incentive.

BILL SUMMARY:

Restructure Machinery and Equipment Credits. Under current law, the targeted statewide investment tax credit is equal to 7% of eligible investment in machinery and equipment. The credit is taken over seven years and applies to the investment that exceeds a certain threshold. The threshold amount varies by tier as follows:

Tier	Threshold	Credit
1	0	7%
2	100,000	7%
3	200,000	7%
4	500,000	7%
5	1,000,000	7%

The threshold is used first to determine eligibility. In addition, the credit is based on the amount of the investment in machinery and equipment that exceeds the threshold amount. The bill restructures the credit rate and threshold by increasing the minimum investment threshold in Tiers 4 and 5 and lowers the credit percentage in Tiers 3 through 5. The new credit schedule would be as follows:

Tier	Threshold	Credit
1	0	7%
2	100,000	7%
3	200,000	6%
4	1,000,000	5%
5	2,000,000	4%

The change is effective for business activities that occur on or after January 1, 2003, but not for those activities occurring on or after that date that are subject to a letter of commitment signed before the date.

Worker Training Credit Wage Test. In order to be eligible for Lee Act credits, taxpayers must meet certain wage tests. These tests are based on the average wage of the company's jobs, calculated based on all jobs at an establishment. The bill eliminates the wage test for the worker training credit. The change is effective for tax years beginning on or after January 1, 2003.

Eliminate Wage Test for Tiers 1 and 2. Under current law, taxpayers applying for the Lee Act credits must meet 100% of the wage standard in Tier 1 and exceed 110% of the wage standard in

the remaining tiers. The bill eliminates the wage standard for Tiers 1 and 2. The change is effective for tax years beginning on or after January 1, 2003.

Development Zone Technical Change. Enhanced Lee Act credits are allowed for projects in development zones (high poverty areas). The bill indicates that a parcel of property partially located in a development zone is considered entirely within the zone if all of the following conditions are met: (1) at least 50% of the parcel is located within the zone; (2) the parcel was in existence and under common ownership prior to the most recent population census; and (3) the parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. This change becomes effective July 1, 2002.

Job Development Investment Grant Program. Establishes the Job Development Investment Grant Program to be administered by the Economic Investment Committee. Under the program, the Committee may enter into agreements with businesses to provide grants in the form of withholding tax payment givebacks. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State.

(2) The project is economically sound and will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) The project is at substantial risk of locating in another state.

(5) A grant is necessary to secure the project for this State.

(6) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10
Tier Four	20
Tier Five	20

A project that consists solely of retail facilities is not eligible for a grant. If a project consists of both retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents non-retail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. Catalog distribution centers are not considered retail facilities.

Just like the Bill Lee Act, a business must provide health insurance for all of the full-time employees of the project for which the grant is made.

The Economic Investment Committee will consist of the following members:

(1) The Secretary of Commerce.
(2) The Secretary of Revenue.
(3) The Director of the Office of State Budget and Management.

The Committee may act only upon the unanimous consent of the members. A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The most recent audited financial statements of the business and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created during the base years and thereafter, and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Information concerning other states being considered for the project and the nature of any benefits the company would enjoy as a result of locating in those states.
(7) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify.

The Committee will consider a application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this program to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require. The applicant business is responsible for providing to the Committee all the information required.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of the program. The amount of a grant may be calculated as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member

who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

When filing an application under this section the business must pay the Committee a fee of $5,000. The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this section among the agencies responsible for evaluating the application. The proceeds of the fee are receipts of the agency to which they are credited.

The bill establishes extensive reporting requirements for the Committee.

The Committee is required to conduct a study to determine the minimum funding level required to implement the program successfully and to report the results of this study no later than March 1 of each year.

The amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than 10% and no more than 80% of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee after considering the following:

(1) The number of eligible positions to be created.
(2) The expected duration of those positions.
(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the business will receive from the State for the project.
(5) The total dollar investment the business is making in the project.

The term of the grant shall not exceed 15 years starting with the first year a grant is made.

The grant percentage may be based only on eligible positions created during the base years (first two years of program) unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

The percentage established in the agreement shall be reduced by 25% for any eligible position that is located in an enterprise tier four or five area.

A business that is receiving any other grant by operation of State law may not receive grant monies under this program if the total state grants exceed (80%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

Each community economic development agreement shall include the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
(9) A provision that permits the Committee to amend an agreement pursuant to certain guidelines.
(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least 150% of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.
(12) A provision establishing the conditions under which the grant agreement may be terminated and grant funds recaptured by the Committee.
(13) A provision stating that unless the agreement is amended or terminated the agreement is binding and constitutes a pledge and a continuing appropriation of the amount of the grant.

A community economic development agreement may contain the following:

(1) A provision setting out allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement
(2) A provision that allows the Committee to consider entering into an additional agreement with the business within five years after the execution of the agreement regardless of whether the program is still in effect at that time if all of the following conditions are met:

a. The business's decision to locate in North Carolina is contingent upon the ability to have a later project considered for a grant.
b. The later project is described in detail in the agreement. This description must include the nature of the additional project, the anticipated investment and new jobs associated with the later project, the anticipated location of the later project, the anticipated wage of the

new jobs, and the relationship of the later project to the business's current project.

c. The later project will create at least 75 new jobs in counties currently designated as enterprise tier one, two, or three areas, or 150 new jobs in counties currently designated as enterprise tier four and five areas.

If the current program is still in effect at the time the business applies for a grant for the later project, the business must apply for a grant as it exists at that time. If the current grant program is no longer in effect at the time the business applies for a grant for the later project, the business must apply for a grant according to the provisions of the grant program as it existed immediately before it was repealed or otherwise became ineffective.

No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant shall submit to the Committee a copy of its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section the business must pay the Committee a fee of $1,500. The fee is due at the time the submission is made. The Committee shall determine the allocation of the fee imposed by this section among the agencies responsible for evaluating the submission. The proceeds of the fee are receipts of the agency to which they are credited.

The Committee may require any information that it considers necessary to effectuate the provisions of this program. The Committee may audit any business receiving a grant at any time.

If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee, the Committee may amend the agreement to reduce the amount of the grant or the term of the agreement. The reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement.

If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee may terminate the agreement.

A qualifying business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this program in any year until the Secretary of Revenue has certified to the Committee the amount of withholdings received in that year by the Department of Revenue from the business. A qualifying business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the

amount of a grant for which the business would be eligible under the agreement without regard to the 25% grant reduction in Tiers 4 and 5. The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee.

At the time the State Controller remits a check to a business, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to the 25% reduction for Tiers 4 and 5.

In developing criteria for the awarding of grants and for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee shall consider criteria that address the following:

(1) Economic impact of the project.
   a. Impact on gross regional product and gross State product.
   b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.
   c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.
   d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.
   e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
   f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
   g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.
   h. The economic demands the project is expected to place upon the community or communities in which it will locate.

(2) Strategic importance of the project to the State, region, or locality.
   a. The extent to which the project builds or enhances an industrial cluster.
   b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.
   c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.
   d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
   e. The extent to which the project can be expected to contribute significantly to and support the local community.
   f. The degree to which the project can be identified as at-risk of being developed or located in another state and the degree to which a grant

would play a role in any final decision to develop or locate the project in this State.

(3) Quality of jobs.
   a. The wage level and status of the jobs to be created.
   b. The quality and value of benefits offered by the company.
   c. The potential for employee advancement.
   d. The extent of training programs offered by the company.
   e. The sustainability of the jobs in the future.
   f. The workplace safety record of the company.

(4) Quality of the industry and the project.
   a. The nature of the project and the projects' relationship to the larger business of the company.
   b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.
   c. The long-term prospects for growth at the project site or sites.
   d. The long-term prospects for growth of the company and the industry within the United States.
   e. The financial stability of the company associated with the project.

(5) Environmental impact of the project.
   a. The nature of the business to be conducted.
   b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

The bill also makes two changes to the Industrial Development Fund (IDF) and to the Utility Account, which is part of that Fund. The IDF provides assistance to local governments for improvements to infrastructure to enable the locality to attract new businesses. Usually, this assistance is provided to make general improvements, such as improvements to or development of industrial parks, and is not tied to luring a specific project.

The first change is to expand the purposes for which funds in both the Fund and the Account may be used to allow expenditures for telecommunications and high-speed broadband lines and equipment. In addition, the bill would expand the focus of the Utility Account to allow funds to be used to assist local governments in enterprise Tier 3 as well as Tiers 1 and 2 (current law).

The provisions dealing with the job development investment grant are effective when the bill becomes law.

ASSUMPTIONS AND METHODOLOGY:

Bill Lee Act Changes. The fiscal impact estimates for the proposals modifying the Bill Lee Act are based on a sampling of 1999 tax returns filed by businesses reporting or claiming Lee Act credits. The sampling was carried out by the Department of Commerce, based on a universe of 566 firms claiming credits, and was based on scientific methodology. The actual sample size

represented 39% of the firms. Since some firms in the sample had facilities at two or more sites, there were a total of 260 locations included in the sample.

Job Development Investment Grant. This initiative represents a significant change from the structure of the Bill Lee Act incentives. Eligibility language in the bill leaves the determination to the Economic Investment Committee. This committee will have broad discretion to negotiate the terms of an agreement, including the amount of the grant and the number of years for which the grant is provided. This makes it impossible to determine the usage of the grant program.

In lieu of an actual projection, the Department of Commerce developed a simulation of the impacts under a specific set of assumptions. The first step in the model was a discussion with industrial recruitment personnel within Commerce. This discussion suggested approximately 140 prospects per year. Of this amount it was assumed that about 70 would be new projects of interest under the program. The next step was to assume 30 would qualify for a grant, with 22 of the projects resulting in an actual agreement. Of this total, 10 units would be located in Tiers 4 and 5 and the remaining 12 projects would be allocated equally to Tiers 1 through 3. For the new jobs in Tiers 4 and 5, an average salary of $40,000 was used. The salary amount for Tiers 1 through 3 was $30,000. The model assumed that withholding taxes would amount to 6% of total salary. Each project was based on 200 employees. Annual salary growth of 4% was used for future years. Finally, the term of the grant was assumed to be 10 years.

Job Development Investment Grant ($Million)				
State Fiscal Year	**Withholding Tax Collected**	**Amount Retained By General Fund**	**Amount Retained By Taxpayer**	**Rural Infrastructure Allocation**
03-04	9.48	1.90	6.58	1.00
04-25	19.53	3.91	13.55	2.08
05-06	30.22	6.04	20.93	3.24
06-07	31.42	6.28	21.77	3.37
07-08	32.68	6.54	22.64	3.50
08-09	34.00	6.80	23.55	3.65
09-10	35.34	7.07	24.48	3.79
10-11	36.79	7.36	25.49	3.95
11-12	38.27	7.65	26.51	4.10
12-13	39.81	7.96	27.58	4.27
13-14	27.36	5.47	18.92	2.96
14-15	14.10	2.82	9.74	1.54

How the 2 Carolinas stack up

Economy *from 1E*

counties and Wilmington.

In Hickory, a slowdown in the furniture industry combined with the fiber-optics bust to push up the region's jobless rate threefold in the last two years, to 8.1 percent.

South Carolina, meanwhile, is making headway in the biotechnology sector.

In a major coup, the state beat out North Carolina to lure CropTech, a Virginia company that is trying to use bioengineering to make medicines and other products from tobacco. Massachusetts-based Biopure Corp. will invest more than $100 million in a new plant in Sumter County, S.C., after being lured with an incentive package valued at more than $100 million.

Although N.C. universities still conduct twice as much research per capita, their counterparts in South Carolina are showing promise. In 1999, South Carolina was fifth in the number of start-up companies spun off per $10 million in research and development spending by its universities, according to the Corporation for Enterprise Development, a Washington, D.C., organization that ranks state economies.

Tourism

South Carolina's more-popular tourism attractions have proven remarkably resilient. Because they are relatively inexpensive and traditionally cater to visitors arriving by car, Charleston, Myrtle Beach and other destinations have been less affected by the decline in air travel after Sept. 11.

In fact, 7 percent of Americans polled this spring by the Travel Industry Association said they planned to visit South Carolina, making it the nation's 10th most popular destination. Florida, which ranked first, was the only other Southeastern state to make the top-10 list.

Service sector

South Carolina is not as far along as North Carolina in its transition from manufacturing to a service-based economy. That means its health-care, education, tourism and other service industries are still maturing and growing faster.

In the retail and wholesale trade, finance and construction industries, for example, South Carolina created 10,200 new jobs in the year ended May 31, 2002. North Carolina, in contrast, lost those sectors, according to preliminary Department of Labor estimates.

When it comes to service jobs, "we are probably in a more rapid growth phase," said Sam McClary, assistant director of labor market information with the S.C. Employment Security Commission. "They (North Carolina) are already where we will end up eventually."

PHOTO COURTESY OF CHARLESTON AREA CONVENTION & VISITORS BUREAU

South Carolina's port city of Charleston is a huge tourist draw and is also in the running to lure a DaimlerChrysler van plant that could employ 3,000.

THE FIGHT IS ON
5E | Georgia's bid for the DaimlerChrysler van plant

Manufacturing

There are signs that S.C. manufacturers are becoming more competitive.

In 1997, S.C. companies spent 40 percent more on buildings, machinery and equipment than N.C. companies on a value-added basis. That was enough to rank South Carolina sixth in the nation, while North Carolina came in 27th, according to the CED's Development Report Card for the States.

The modernization is driven by growing investments in South Carolina's automotive, pharmaceutical, packaging and distribution industries, said George Harben, director of research for the S.C. Department of Commerce.

South Carolina's decision in 1992 to spend $130 million in incentives to lure BMW to the Greenville area has paid rich dividends.

North Carolina was never a contender for the project, in large part because leaders in Raleigh preferred investing in public education, reasoning that high-paying jobs would follow. But BMW has surpassed all expectations by investing $1.9 billion in and around its plant in Greer, just outside of Greenville. As textile and other companies laid off workers, the auto plant thrived. It now employs 4,000 and has generated an estimated 16,000 jobs by drawing dozens of suppliers to the state, according to a recent study by the University of South Carolina. The report, paid for in part by BMW, estimates that South Carolina has netted $26.6 million in additional annual tax revenues because of the project.

South Carolina now faces off against Florida and Georgia to lure a DaimlerChrysler van plant that could employ 3,000 in Charleston. The state has put together an incentives package that includes tax rebates, worker training and other incentives valued at $100 million, according to press reports.

North Carolina is not in the running for the DaimlerChrysler plant, largely because state law prevents it from rebating income taxes, a common tool now used by other Southeastern states.

In the last 10 years, the state has gone after only three major industrial projects, said Tad Boggs, a spokesman for the N.C. Department of Commerce. A $115.5 million package helped land a Federal Express air cargo hub at Piedmont Triad International Airport, while $168 million landed a Nucor steel plant in Hertford County in the northeast corner of the state. The state's $109 million bid for a Mercedes Benz plant in the early 1990s was squashed by a $380 million package offered by Alabama.

At the time, many criticized Alabama's bid – nearly $170,000 per job – as excessive. But as the auto industry has gone on to hire thousands of former textile workers in that state, leaders in North Carolina are reconsidering their industrial recruitment strategies.

"We've gotten a wake-up call, and it came six or eight months ago, when we figured out that 70 percent of our (state budget) shortfall was based on revenue lost on income tax," said John Merritt, a senior assistant to N.C. Gov. Mike Easley. "I think we have long underestimated what the long-term tertiary benefits of these plants are. You need one or two of these every so often."

A change of heart

Facing one of North Carolina's worst budget crises, Easley is pushing for tax breaks to lure new employers. Easley has made overhauling corporate tax incentives a top priority.

The governor is pushing the Job Development Investment Grant Program, which would allow the state to return up to half of the employee taxes companies pay to the state. Companies could use the rebates for worker training, buildings, equipment or infrastructure improvements needed to create jobs.

If lawmakers approve the measure, North Carolina could become more aggressive in bidding for the next auto plant, said Merritt. In fact, the state has already optioned 1,500 acres along Interstate 85 in Alamance County to prepare for the next opportunity.

The Charlotte Regional Partnership is also joining the fray. The partnership is in the early stages of putting together a large site within 70 miles of Charlotte/Douglas International Airport that could be used to lure a major project, said Mike Almond, president and chief executive officer with the private economic development organization.

"For a long time in 1980s, North Carolina was a leader in the Southeast," said Mark Sweeney, a former industrial recruiter for South Carolina, of the state's industrial-recruiting efforts. "North Carolina was sort of the king of the hill. Quite frankly, in terms of policy, organizational structure and practice, other states seem to have done a better job over the last few years."

Douglas Woodward, a professor of economics at the University of South Carolina, says he is not too concerned about the month-to-month employment numbers. When North Carolina's high-tech sector bounces back, he says, the state's robust university research puts it in a great position for long-term economic growth.

"The home-grown strategy will ultimately lead to higher per capita income," he said. "That's our vulnerability."

Reach Charles Lunan at (704) 358-5160.

The Charlotte Observer

Sunday Business

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SUNDAY, I

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NORTH CAROLINA HOUSE OF REPRESENTATIVES
MEMBER 57TH DISTRICT

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How S.C. is winning jobs race

Incentives, BMW help push the state ahead of its northern neighbor

BY CHARLES LUNAN
Staff Writer

With each passing month the numbers grow harder to ignore: South Carolina's unemployment rate sits well below North Carolina's – and the gap is growing wider.

In May, unemployment dropped a mere 0.1 percentage point in North Carolina to 6.8 percent, the nation's third-highest after Washington and Oregon. In South Carolina, unemployment fell 0.3 percentage point to 5.5 percent, or 19th-highest.

Equally disturbing for some leaders in Raleigh, North Carolina is shedding jobs at more than twice the rate of its southern neighbor.

What accounts for this unlikely disparity?

Economists and analysts say several factors explain the recent shift.

While both states have shed manufacturing jobs equally, South Carolina's service sector has added jobs at twice the pace of North Carolina's. North Carolina also was caught off guard by the rapid decline of its high-flying technology sector, which tanked just as textiles, furniture and tobacco were slumping more rapidly. South Carolina was never as dependent on technology employment, and thus suffered less.

Another key factor, economists say, is BMW's presence in South Carolina. Since opening its Greer plant in 1994, the German automaker has been a jobs magnet along the Interstate-85 corridor.

Despite the recent swing, economists say North Carolina remains better suited for long-term economic growth, though South Carolina has made key strides.

> "We figured out that 70 percent of our (N.C. budget) shortfall was based on revenue lost on income tax."
>
> JOHN MERRITT
> AN ASSISTANT
> TO N.C. GOV. MIKE EASLEY

To get a better picture of how the two states measure up, consider how they fare in some key economic sectors:

Technology

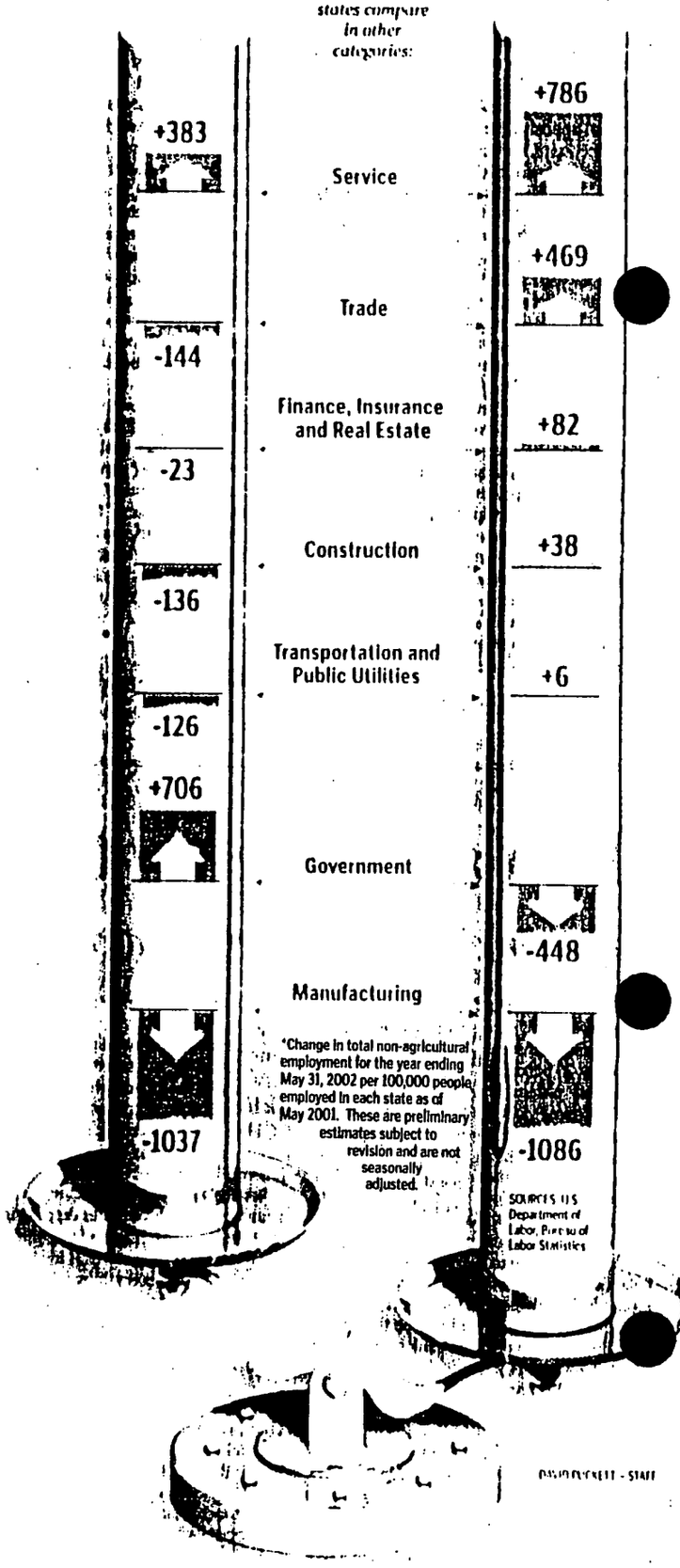
In a matter of months, fiber optics went from being one of North Carolina's up-and-coming industries to one of its fastest shrinking. Employment in the electronics industry has dropped by nearly 13 percent, or 7,500 jobs, since the Nasdaq crashed in April 2000. That's the lowest level since the last recession.

The outlook is not expected to improve until well into 2003. Corning Inc. will lay off thousands this year, including hundreds at plants in Catawba and Cabarrus

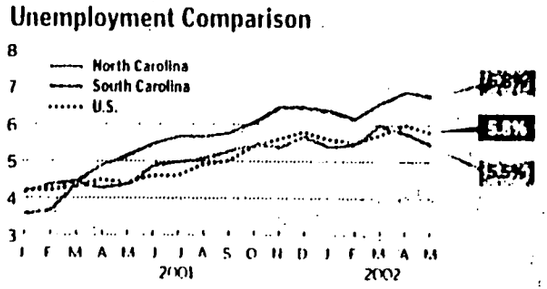
SEE ECONOMY | 4E

Weighing the Differences

In the last year, North Carolina shed jobs at more than twice the rate of South Carolina. Here's how the states compare in other categories:



Unemployment Comparison



N.C. Economic Stimulus and Job Creation Act

House Bill 1734

Recommendations of the North Carolina Economic Development Board
Recruitment and Retention Committee

Modifications to William S. Lee Act: Details

Background

Several changes to Lee Act thresholds and rates are proposed to enhance the incentive effect of the Act and provide a source of funding to support other more targeted economic development tools.

*These changes are proposed in the bill **only** if the General Assembly enacts legislation to establish the proposed Job Development Investment Grant program and fund the One North Carolina Fund.*

Two additional changes have been proposed to modify the wage test to render the Act more effective and to address a wrinkle in the way development zones are designed.

Alter Rates and Increase Threshold for Machinery & Equipment Tax Credits

- Taxpayers are currently eligible for Lee Act tax credits of 7% of the value of new investments in machinery and equipment above certain threshold amounts.

- Although the value of some Lee Act tax credits is graduated by tier, the machinery and equipment credit is not. The vast majority of credit is claimed in higher tier counties.

- The following new rates and thresholds are recommended:

Tier 1	7%	of value above $0	*(no change)*
Tier 2	7%	of value above $100,000	*(no change)*
Tier 3	6%	of value above $200,000	
Tier 4	5%	of value above $1,000,000	
Tier 5	4%	of value above $2,000,000	

- These changes enhance the incentive value of the machinery and equipment credit in the poorer counties.

- *Assuming a permanent funding source for the One North Carolina Fund is found and a Job Development Incentive enacted,* making this change should not adversely North Carolina's competitiveness with other states in higher tier counties. Urban developers involved in recommending the change note that few other states provide a credit of this nature, and the changes would be a

reasonable trade-off for a better tool like the Job Development Investment Grant Program.

- Projected to reduce program costs by $36 million over life of Lee Act ($3.6 million in FY 03-04)

Delete Extra Wage Test for Worker Training Credit

- Worker training tax credit is scarcely used at present.

- Provides state's primary incentive for encouraging retraining of existing workers.

- Currently, to be eligible, a taxpayer must first meet the wage test for creating new jobs or for investing in machinery and equipment. Then, the taxpayer must meet a second wage test -- whether the average wage of the workers trained exceeds the county wage standard.

- The second test is superfluous. Because the workers that require training are often production workers who are not highly paid, companies that meet the first wage test may nonetheless be rendered ineligible because the workers who are receiving the training cannot meet the second wage test.

Modify Wage Test in Tiers 1 & 2

- Companies currently must pay 110% (100% in Tier 1) of the county average weekly wage and provide health insurance to be eligible for any Lee Act credits.

- Current wage standard test tends to discourage jobs and investments in Tiers 1 and 2.
  - These tiers already have the fewest opportunities to recruit new jobs and investment.
  - They are suffering the most long-term damage in the current downturn.
  - With their smaller wage bases, their counties are the ones most likely to suffer distortion of their true wage picture by the presence of a single well-paying industry.

- Dropping the current wage test in these counties should aid in job creation and new investment.

- The requirement that Lee Act eligible industries provide health insurance ensures that only quality jobs and investment will be rewarded.

- Current wage test would be retained for Tiers 3, 4, and 5.

- Relatively minor fiscal impact ($804,000 over life of Lee Act).

Extend Development Zone Benefits to Some Parcels of Property Partially in Development Zones

- Currently, when parcels of property straddle the line of a development zone, jobs and investment on that tract may not be eligible for development zone benefits.

- Change would allow contiguous parcels that are at least 50% inside a zone, to be treated as entirely within the zone.

- Language of the changes requires parcel to have been in existence when last census conducted that determined the eligibility of the zone. Eliminates possibility of gerrymandering to create eligible larger eligible parcels after the zone was created.

House Committee on Finance

Minutes
August 1, 2002

Continuing from its earlier meeting on this day, the House Committee on Finance met on Thursday, August 1, 2002, at 11:00 A.M., in Room 544 of the Legislative Office Building.

Rep. Gordon Allen, presiding Chair, called the meeting to order, reminding those present that the meeting was being continued from an earlier meeting this day to resume discussions on HB 1734. The following members were present: Chairmen Allen, Buchanan, and Luebke; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Holliman, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, and Cunningham. The following Sergeant-at-Arms staff were present: Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included: Trina Griffin, Martha Walston, David Crotts, Linda Millsaps, Canaan Huie, Martha Harris, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Visitor Registration Sheet and Agenda are attached and incorporated as a part of these minutes.

Chairman Allen recognized and thanked pages Thomas Packer of Nash County, sponsored by Rep. Arnold; Jonathan Hammill of Gaston County, sponsored by Rep. Rayfield; Carolina Batchelor of Mecklenburg County, sponsored by Speaker Black; and Nan Yang of Wake County, sponsored by Rep. Weiss.

Chairman Allen opened the floor to hear from anyone from the general public who wished to speak on HB 1734. Kim Cartron of the NC Budget and Tax Center, spoke against the bill; Leslie Bevacqua of NCCBI spoke in favor of the bill; Natalie English of the Charlotte Chamber of Commerce spoke in support of the bill; Don Carrington with the John Locke Foundation spoke against the bill; Perri Morgan with the National Federation of Independent Businesses spoke against the bill; Chris Fitzsimon of the Common Sense Foundation urged defeat of the bill; and Mohammad Jenatian, President of the Greater Charlotte Hospitality & Tourism Alliance spoke in support of the bill.

After hearing remarks by Rep. Owens and Secretary Fain and a discussion by the Committee, Chairman Allen accepted the following amendments:

Amendment No. 1 (attached), offered by Representative Cox, adopted.

Amendment No. 2 (attached), offered by Representative Womble, adopted.

Amendment No. 3 (attached), offered by Representative Weiss, adopted.

Amendment No. 4 (attached), offered by Representative Weiss, adopted.

Amendment No. 5 (attached), offered by Representative Weiss, failed.

Amendment No. 6 (attached), offered by Representative Weiss, adopted.

Amendment No. 7 (attached), offered by Representative Weiss, adopted.

Amendment No. 8 (attached), offered by Representative Pope, adopted.

Amendment No. 9 (attached), offered by Representative Pope, adopted.

Amendment No. 10 (attached), offered by Representative Pope, failed.

Amendment No. 11 (attached), offered by Representative Pope, adopted.

Amendment No. 12 (attached), offered by Representative McComas, adopted.

Following debate on the bill and amendments, Representative Cox moved that HB 1734 be given a favorable report as to the Committee Substitute Bill, which changes the title, unfavorable to the original bill and recommended that the Committee Substitute Bill be re-referred to the Committee on Appropriations. The motion carried. Copies of the PCS, Amendments, Bill, Bill Summary, and Fiscal Note are attached as part of these minutes.

There being no further business, the meeting was adjourned at 1:30 P.M.

Respectfully submitted,

Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

House Bill 1734
Committee Report
Visitor Registration Sheet

AGENDA

House Finance Committee

August 1, 2002
8:30 A.M.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1736 **RETIRED LEGISLATOR LICENSE PLATE - REP. THOMPSON**

HB 1734 **NC ECONOMIC RECOVERY AND COMPETITIVENESS ACT – REP. OWENS, REP. ALLEN**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Name of Committee | Date

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie English	Charlotte Chamber
Don Carrington	John Locke Foundation
PERRI MORGAN	NFIB
Ann Duncan	NCLM
Alice Garland	EC
DAN COUNCIL	GOVS OFFICE
Joe Stewart	Dept of State Treasurer
Marie Colvert	Black Mountain Director
Janice Burke	N.C. Dept of State Treasurer
Jim Blackburn	friend of Janice Burke
CHAS. ARCHER	NCLM "
Beau Mills	NC Metropolitan Coalition
Marc Sessions	Wilmington Log Yard - NSC
MOHAMMAD JENATION	HTA, CHARLOTTE
Brian Francis	Mecklenburg County
Ken Atkins	Wake County Economic Development
Sel TURLINGTON	Project Pierce
Omid Nasab	Hunton & Williams
Elaine Myers	NC BTC
Hal Weeks	DOT
Will Leeson	Capitol Group
John Pell	NCEDA
Chris Fitzsimon	Common Sense
Kim Cook	NC BTC
Stewart Dickinson	NC DOC
Andy Fisher	NC DOC
Jonathan Tait	NC DOR
Tom Greenwood	NC Eastern Region

VISITOR REGISTRATION SHEET

Name of Committee _____ Date _____

VISITORS:. PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diana Hicks	House Page
Coleman Mehta	Rep Gibson
Andrea Schrag	Rep. Alexander
[illegible]	NC State Univ
Kacy Hunt	Rep. [illegible]
Jim Fain	DOC
Shellie Jennings	NCEDA
[illegible]	NCCIT
Ron Aycock	Co. Com. Assoc.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1734 A BILL TO BE ENTITLED AN ACT TO ESTABLISH TIERED JOB CREATION THRESHOLDS FOR THE CREDIT FOR CREATING JOBS; TO RAISE THE INVESTMENT THRESHOLD FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO ESTABLISH TIER RATES FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO MODIFY THE WAGE STANDARD FOR THE CREDIT FOR WORKER TRAINING; TO MODIFY THE WAGE STANDARD FOR TIER ONE AND TWO COUNTIES; TO PROVIDE RECURRING FUNDS FOR THE INDUSTRIAL RECRUITMENT COMPETITIVE FUND; TO ENACT A JOB DEVELOPMENT INVESTMENT GRANT PROGRAM TO IMPROVE NORTH CAROLINA'S COMPETITIVENESS IN ECONOMIC DEVELOPMENT AND THE RECRUITMENT AND RETENTION OF NEW BUSINESS AND INDUSTRIAL PROJECTS AND EXPANSIONS; AND TO EXTEND THE TAX CREDIT FOR QUALIFIED BUSINESS INVESTMENTS.

☐ 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 Appropriations.)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1734
PROPOSED COMMITTEE SUBSTITUTE H1734-PCS6470-LYxf-48

Short Title: NC Economic Stimulus and Job Creation Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO RAISE THE INVESTMENT THRESHOLD FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO ESTABLISH TIERED RATES FOR THE CREDIT FOR INVESTING IN MACHINERY AND EQUIPMENT; TO REQUIRE A TAXPAYER AND ITS RELATED ENTITIES TO SATISFY ANY OUTSTANDING STATE TAX ASSESSMENTS BEFORE RECEIVING A BILL LEE ACT CREDIT; TO MODIFY THE WAGE STANDARD FOR THE CREDIT FOR WORKER TRAINING; TO MODIFY THE WAGE STANDARD FOR ENTERPRISE TIER ONE AND TWO COUNTIES; TO MODIFY THE WAGE STANDARD FOR TAXPAYERS WITH A TAX YEAR OTHER THAN A CALENDAR YEAR; TO TREAT CERTAIN PARCELS OF LAND PARTIALLY LOCATED IN A DEVELOPMENT ZONE AS IF THE ENTIRE PARCEL WERE LOCATED WITHIN THE DEVELOPMENT ZONE; TO ENACT A JOB DEVELOPMENT INVESTMENT GRANT PROGRAM TO PROVIDE ECONOMIC STIMULUS, TO CREATE JOBS, AND TO AID IN THE DEVELOPMENT OF BUSINESS AND INDUSTRIAL PROJECTS AND EXPANSIONS IN NORTH CAROLINA; TO MODIFY THE INDUSTRIAL DEVELOPMENT FUND TO ALLOW FOR EXPENDITURES RELATED TO TELECOMMUNICATIONS AND BROADBAND LINES AND EQUIPMENT AND TO ALLOW FOR EXPENDITURES FROM THE UTILITY ACCOUNT IN ENTERPRISE TIER THREE AREAS; AND TO MAKE A TECHNICAL CORRECTION REGARDING THE AUTHORITY OF A LOCAL GOVERNMENT TO LEVY A PROPERTY TAX FOR ECONOMIC DEVELOPMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.9(a) and (c) read as rewritten:

"(a) General Credit. – If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year,

the taxpayer is allowed a credit equal to ~~seven percent (7%)~~ the applicable percentage of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service. The applicable percentage is as follows:

Area Enterprise Tier	Applicable Percentage
Tier One	7%
Tier Two	7%
Tier Three	6%
Tier Four	5%
Tier Five	4%

...

(c) Threshold. – The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service at more than one establishment in an enterprise tier during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service at each establishment. If the taxpayer places eligible machinery and equipment in service at an establishment over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	~~500,000~~1,000,000
Tier Five	~~1,000,000~~2,000,000"

SECTION 1.1. G.S. 105-129.4 is amended by adding a new subsection to read:

"(b6) Final Assessments. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims an installment or carryforward of the credit, the taxpayer or a related entity of the taxpayer has received a notice of final assessment and that assessment has not been satisfied or otherwise resolved."

SECTION 2. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs ~~or the credit for worker training~~ in an enterprise tier three, four, or five area if, for the calendar year the jobs are ~~created or the worker training is provided,~~created, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer

is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central office or aircraft ~~facility, or the credit for substantial investment in other property~~facility in a tier three, four, or five area if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. For a taxpayer with a taxable year other than a calendar year, the taxpayer must use the wage standard for the calendar year in which the taxable year begins. No wage standard applies to credits for activities in an enterprise tier one or two area.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to ~~the applicable percentage times~~one hundred ten percent (110%) of the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. ~~The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%).~~ The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 3. G.S. 105-129.3A is amended by adding a new subsection to read:

"(d) Parcel of Property Partially in a Development Zone. – For the purposes of this section, a parcel of property that is located partially within a development zone is considered entirely within the development zone if all of the following conditions are satisfied:

(1) At least fifty percent (50%) of the parcel is located within the development zone.

(2) The parcel was in existence and under common ownership prior to the most recent federal decennial census.

(3) The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary."

SECTION 4. In addition to heightening the incentive effect of the William S. Lee Quality Jobs and Business Expansion Act in lower-tiered counties, the changes in Section 1 of this act are intended to reduce the cost of the Act and make more revenues available to the State of North Carolina in future years. It is the intent of the General Assembly in making these changes to provide a source of funds that could be used in future years to support other, more targeted economic development programs aimed at helping create new jobs in North Carolina.

SECTION 5.(a) Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2F.

"Job Development Investment Grant Program.

"**§ 143B-437.44. Legislative findings and purpose.**

The General Assembly finds that:

(1) It is the policy of the State of North Carolina to stimulate economic activity and to create new jobs for the citizens of the State by encouraging and promoting the expansion of existing business and industry within the State and by recruiting and attracting new business and industry to the State.

(2) Both short-term and long-term economic trends at the State, national, and international levels have made the successful implementation of the State's economic development policy and programs both more critical and more challenging; and the decline in the State's traditional industries, and the resulting adverse impact upon the State and its citizens, have been exacerbated in recent years by adverse national and State economic trends that contribute to the reduction in the State's industrial base and that inhibit the State's ability to sustain or attract new and expanding businesses.

(3) The economic condition of the State is not static and recent changes in the State's economic condition have created economic distress that requires a reevaluation of certain existing State programs and the enactment of a new program as provided in this Part that are designed to stimulate new economic activity and to create new jobs within the State.

(4) The enactment of this Part is necessary to stimulate the economy, facilitate economic recovery, and create new jobs in North Carolina; and this Part will promote the general welfare and confer, as its primary purpose and effect, benefits on citizens throughout the State through the creation of new jobs, an enlargement of the overall tax base, an expansion and diversification of the State's industrial base, and an increase in revenue to the State and its political subdivisions.

(5) The purpose of this Part is to stimulate economic activity and to create new jobs within the State.

(6) It is not the intent of the General Assembly that grants provided through this Part be used as venture capital funds, business incubator

funds, or business start-up funds or to otherwise fund the initial capitalization needs of new businesses.

(7) Nothing in this Part shall be construed to constitute a guarantee or assumption by the State of any debt of any business or to authorize the taxing power or the full faith and credit of the State to be pledged.

"**§ 143B-437.45. Definitions.**

The following definitions apply in this Part:

(1) Agreement. – A community economic development agreement under G.S. 143B-437.51.

(2) Base years. – The first two complete calendar years following the effective date of an agreement.

(3) Business. – A corporation, sole proprietorship, cooperative association, partnership, S corporation, limited liability company, nonprofit corporation, or other form of business organization, located either within or outside this State.

(4) Committee. – The Economic Investment Committee established pursuant to G.S. 143B-437.48.

(5) Eligible position. – A position created by a business and filled by a new full-time employee in this State during the base years or in subsequent years of a grant.

(6) Full-time employee. – A person who is employed for consideration for at least 35 hours a week, whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statutes, and who is determined by the Committee to be employed in a permanent position according to criteria it develops. The term does not include any person who works as an independent contractor or on a consulting basis for the business.

(7) New employee. – A full-time employee who represents a net increase in the number of the business's employees statewide and who is first employed on the project that is the subject of an agreement. The term includes an employee rehired or called back from a layoff that occurs during or following the base years to a vacant position previously held by that employee or to a new position established during or following the base years.

(8) Related member. – Defined in G.S. 105-130.7A.

(9) Withholdings. – The amount withheld by a business from the wages of employees in eligible positions under Article 4A of Chapter 105 of the General Statutes.

"**§ 143B-437.46. Job Development Investment Grant Program.**

(a) Program. – There is established the Job Development Investment Grant Program to be administered by the Economic Investment Committee. In order to foster job creation and investment in the economy of this State, the Committee may enter into negotiated agreements with businesses to provide grants in accordance with the provisions of this Part. The Committee shall develop criteria to be used in determining

whether the conditions of this section are satisfied and whether the project described in the application is otherwise consistent with the purposes of this Part. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State by the business.

(2) The project will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy by, for example, providing worker training opportunities, constructing and enhancing critical infrastructure, increasing development in strategically important industries, or increasing the State and local tax base.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) A grant under this Part is necessary for the completion of the project in this State.

(5) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

(b) Cap. – The maximum number of agreements the Committee may enter into each fiscal year is 25.

"**§ 143B-437.47. Eligible projects.**

(a) Minimum Number of Eligible Positions. – A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10
Tier Four	20
Tier Five	20

(b) Nonretail Facilities. – A project that consists solely of retail facilities is not eligible for a grant under this Part. If a project consists of both retail facilities and nonretail facilities, only the portion of the project consisting of nonretail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents nonretail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. For the purposes of this Part, catalog distribution centers are not retail facilities.

(c) Health Insurance. – A business is eligible for a grant under this Part only if the business provides health insurance for all of the full-time employees of the project with respect to which the grant is made. For the purposes of this subsection, a business provides health insurance if it pays at least fifty percent (50%) of the premiums for

health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a business receives a grant under this Part, the business must provide with the submission required under G.S. 143B-437.52 a certification that the business continues to provide health insurance for all full-time employees of the project with respect to which the grant is made. If the business ceases to provide health insurance to all full-time employees of the project with respect to which a grant is made, the Committee may amend or terminate the agreement as provided in G.S. 143B-437.53.

(d) Wage Standard. – In order for a business to be eligible for a grant under this Part, the average wage of all jobs at the location with respect to which a grant is made must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at more than one location, the average wage of all jobs at a location must meet the wage standard set out in G.S. 105-129.4(b) in order for that location to be included in the agreement.

"**§ 143B-437.48. Economic Investment Committee established.**

(a) Membership. – The Economic Investment Committee is established. The Committee consists of the following members:

(1) The Secretary of Commerce.

(2) The Secretary of Revenue.

(3) The Director of the Office of State Budget and Management.

(b) Unanimous Decision Required. – The Committee may act only upon a unanimous decision of its members.

(c) Conflict of Interest. – It is unlawful for a former member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part while the former member was serving on the Committee. Violation of this subsection is a Class 1 misdemeanor.

(d) Sunshine. – Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

"**§ 143B-437.49. Applications; fees; reports; study.**

(a) Application. – A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all of the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.

(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.

(3) The most recent audited financial statements of the business and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created during the base years and thereafter and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Certification that the business will provide health insurance to all full-time employees of the project.
(7) Information concerning other locations, including locations in other states and countries, being considered for the project and the nature of any benefits that would accrue to the business if the project were to be located in one of those locations.
(8) Information concerning any other State or local government incentives for which the business is applying or that it has an expectation of receiving.
(9) Any other information necessary for the Committee to evaluate the application.
(10) Certification that the project will not be undertaken in North Carolina unless the applicant is awarded a grant.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify under this Part.

The Committee will consider an application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this Part to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require for the purposes of this Part. The applicant business is responsible for providing to the Committee all the information required under this Part.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of this Part. The amount of a grant may be calculated under the terms of this Part as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received under this Part by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

(b) Application Fee. – When filing an application under this section, the business must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee

imposed by this section among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

(c) Reports. – The Committee shall publish a report on the Job Development Investment Grant Program on or before October 31 of each year. The report shall include the following:

(1) A listing of each community economic development agreement negotiated and entered into during the preceding fiscal year, including the cost/benefit analysis conducted by the Committee during the application process, a description of the project, and the amount of the grant made under the agreement during that year.

(2) An update on the status of projects under agreements entered into before the preceding fiscal year.

(3) The number and enterprise tier area of eligible positions created by projects with respect to which grants were awarded.

(4) The wage levels of eligible positions created by projects with respect to which grants were awarded.

(5) The amount of new income tax revenue received from withholdings related to the projects for which grants were awarded.

(6) The criteria developed by the Committee to implement this Part and any changes in those criteria from the previous fiscal year.

(7) The effectiveness of the program in recruiting new and expanding businesses.

(8) The environmental impact of businesses that have received grants under the program.

(9) The geographic distribution of grants, by number and amount, awarded under the program.

(d) Study. – The Committee shall conduct a study to determine the minimum funding level required to implement the Job Development Investment Grant Program successfully. The Committee shall report the results of this study to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1 of each year.

"**§ 143B-437.50. Calculation of minimum and maximum grants; factors considered.**

(a) Subject to the limitations of subsection (d) of this section, the amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than ten percent (10%) and no more than eighty percent (80%) of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee after considering at least the following:

(1) The number of eligible positions to be created.

(2) The expected duration of those positions.

(3) The type of contribution the business can make to the long-term growth of the State's economy.

(4) The amount of other financial assistance the project will receive from the State or local governments.
(5) The total dollar investment the business is making in the project.
(6) Whether the project utilizes existing infrastructure and resources in the community.
(7) Whether the project is located in a development zone.
(8) The number of eligible positions that would be filled by residents of a development zone.

(b) The term of the grant shall not exceed 15 years starting with the first year a grant is made.

(c) The grant may be based only on eligible positions created during the base years, unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

(d) The percentage established in the agreement shall be reduced by one-fourth for any eligible position that is located in an enterprise tier four or five area.

(e) A business that is receiving any other grant by operation of State law may not receive an amount as a grant pursuant to this Part that, when combined with any other grants, exceeds eighty percent (80%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

"**§ 143B-437.51. Community economic development agreement.**

Each community economic development agreement shall include at least the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
(9) A provision that permits the Committee to amend an agreement pursuant to G.S. 143B-437.53.

(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least one hundred fifty percent (150%) of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.

(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.

(12) A provision establishing the conditions under which the grant agreement may be terminated, in addition to those under G.S. 143B-437.53, and under which grant funds may be recaptured by the Committee.

(13) A provision stating that unless the agreement is amended or terminated pursuant to G.S. 143B-437.53, the agreement is binding and constitutes a pledge and a continuing appropriation of the amount of the grant.

(14) A provision setting out any allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement under G.S. 143B-437.53.

"**§ 143B-437.52. Grant recipient to submit records.**

(a) No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant under this Part shall submit to the Committee a copy of its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section, the business must pay the Committee a fee of one thousand five hundred dollars ($1,500). The fee is due at the time the submission is made. The Committee shall determine the allocation of the fee imposed by this section among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

(b) The Committee may require any information that it considers necessary to effectuate the provisions of this Part.

(c) The Committee may require any business receiving a grant to submit to an audit at any time.

(d) Grant recipients are encouraged to use the State ports of North Carolina and must include in the report required by subsection (a) of this section a report on the tonnage of any freight moved in ocean-borne commerce through the State ports and through any other United States port. If freight is moved through a United States port other than the State ports, then the report must disclose the reasons for using that port.

"**§ 143B-437.53. Failure to comply with agreement.**

(a) If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee, the Committee may amend the agreement to reduce the amount of the grant or the term of the agreement. Any reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement.

(b) If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee may terminate the agreement.

"**§ 143B-437.54. Disbursement of grant.**

A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business or a related member of the business has received a notice of final assessment of State tax due and that assessment has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that there are no outstanding final assessments of State tax due and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding final assessments of State tax due against the business or a related member of the business and (ii) the amount of withholdings received in that year by the Department of Revenue from the business. A business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the amount of a grant for which the business would be eligible under the agreement without regard to G.S. 143B-437.50(d). The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee.

"**§ 143B-437.55. Transfer to Industrial Development Fund.**

At the time the State Controller remits a check to a business under G.S. 143B-437.54, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to G.S. 143B-437.50(d).

"**§ 143B-437.56. Sunset.**

The authority of the Committee to enter into new agreements expires January 1, 2006."

SECTION 5.(b) In developing criteria under G.S. 143B-437.46 for the awarding of grants under Part 2F of Article 10 of Chapter 143B of the General Statutes and under G.S. 143B-437.50 for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee may consider criteria that address the following:

(1) Factors related to the economic impact of the project, such as the following:

a. Impact on gross regional product and gross State product.
b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.
c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.
d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.
e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.
h. The economic demands the project is expected to place upon the community or communities in which it will locate.
i. The number of eligible positions that would be filled by residents of development zones.

(2) Factors related to the strategic importance of the project to the State, region, or locality, such as the following:
a. The extent to which the project builds or enhances an industrial cluster.
b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.
c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.
d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
e. The extent to which the project can be expected to contribute significantly to and support the local community.

(3) Factors related to the quality of jobs, such as the following:
a. The wage level and status of the jobs to be created.
b. The quality and value of benefits offered by the company.
c. The potential for employee advancement.
d. The extent of training programs offered by the company.
e. The sustainability of the jobs in the future.
f. The workplace safety record of the company.

(4) Factors related to the quality of the industry and the project, such as the following:
a. The nature of the project and the projects' relationship to the larger business of the company.
b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.
c. The long-term prospects for growth at the project site or sites.
d. The long-term prospects for growth of the company and the industry within the United States.
e. The financial stability of the company associated with the project.

(5) Factors related to the environmental impact of the project, such as the following:
a. The nature of the business to be conducted.
b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

(6) Other factors that the Economic Investment Committee considers relevant that are not inconsistent with this section and that the Committee determines will further the purposes of Part 2F of Article 10 of Chapter 143B of the General Statutes.

SECTION 6.(a) G.S. 143B-437.01(a)(1) reads as rewritten:

"(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity."

SECTION 6.(b) G.S. 143B-437.01(b1) reads as rewritten:

"(b1) Utility Account. – There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier ~~one and tier two~~one, two, and three areas, as defined in G.S. 105-129.3, in creating jobs in eligible industries. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, telecommunications, high-speed broadband, or electrical utility distribution lines or equipment for existing or new or proposed industrial

buildings to be used for eligible industrial operations. To be eligible for funding, the water, sewer, gas, telecommunications, high-speed broadband, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project."

SECTION 7. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(28) To provide to the Economic Investment Committee established pursuant to G.S. 143B-437.48 information necessary to implement Part 2F of Article 10 of Chapter 143B of the General Statutes."

SECTION 8. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(10) The Economic Investment Committee in developing guidelines for the Job Development Investment Grant Program under Part 2F of Article 10 of Chapter 143B of the General Statutes."

SECTION 9.(a) G.S. 153A-149(c)(10b) reads as rewritten:

"(c) Each county may levy property taxes for one or more of the purposes listed in this subsection up to a combined rate of one dollar and fifty cents ($1.50) on the one hundred dollars ($100.00) appraised value of property subject to taxation. Authorized purposes subject to the rate limitation are:

...

(10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

SECTION 9.(b) G.S. 160A-209(c)(10b) reads as rewritten:

"(c) Each city may levy property taxes for one or more of the following purposes subject to the rate limitation set out in subsection (d):

...

(10b) Economic Development. – To provide for economic development as authorized by G.S. 158-7.1 and G.S. 158-12."

SECTION 9.1. The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the cost versus benefits of the Job Development Investment Grant Program created in this act, the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial Recruitment Competitive Fund. The Study Committee may report the results of its study and any recommendations to the 2004 Regular Session of the 2003 General

Assembly and shall make a final report by March 15, 2005, to the 2005 General Assembly.

SECTION 10. Section 1 of this act is effective for taxable years beginning on or after January 1, 2003, and applies to business activities that occur on or after January 1, 2003, but does not apply to business activities that occur on or after January 1, 2003, that are subject to a letter of commitment signed under G.S. 105-129.9 before January 1, 2003. Sections 2 and 3 of this act are effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE August 1, 2002

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

(Rep.) Sen.) Cox

1 moves to amend the bill on page 6, line s 8-9

2 ( ) WHICH CHANGES THE TITLE

3 by ~~deleting~~ adding the following between the

4 lines:

5 "(b) Cap. - The maximum number of

6 agreements the Committee may enter into

7 each fiscal year is 25."

8

9 and on page 5, line 31,

10 by adding the following at the beginning

11 of the line:

12 "(a) Program. — "

13

14

15

16

17

18

19

SIGNED Cox

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE August 1, 2002

Amendment No. 2
(to be filled in by Principal Clerk)

Rep.) Womble
Sen.)

1 moves to amend the bill on page 9, line s @ 11-12
2 ( ) WHICH CHANGES THE TITLE
3 by adding the following between the lines:
4
5 "(6) Whether the project is located in
6 a development zone.
7 (7) The number of eligible positions that
8 would be filled by residents
9 of a development zone.";
10
11 and on page 12, lines 11-12,
12 by adding the following between the lines:
13
14 "i. The number of eligible positions that
15 would be filled by residents of
16 development zones."
17
18
19

SIGNED Larry Womble

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1734-ALY-146 [v.2]

Date Aug. 1, 2002.2002

Comm. Sub. [YES]
Amends Title [NO]
PCS to First Ed

Representative Weiss

moves to amend the bill on page 6, lines 42-43, by adding the following between those lines:

"(d) Wage standard. – In order for a business to be eligible for a grant under this Part, the average wage of all jobs at the location with respect to which a grant is made must meet the wage standard set out in G.S. 105-129.4(b). If a project is to be located at more than one location, the average wage of all jobs at a location must meet the wage standard set out in G.S. 105-129.4(b) in order for that location to be included in the agreement."

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H1734-ALC-188 [v.2]

Date Aug. 1, ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Representative Weiss

moves to amend the bill on page 8, lines 34 – 35,
by adding the following between the lines:

"(7) The effectiveness of the program in recruiting new and expanding businesses.
(8) The environmental impact of businesses that have received grants under the program.
(9) The geographic distribution of grants, by number and amount, awarded under the program.";

and on page 14, lines 26 – 27,
by adding the following between the lines:

"**SECTION 9.1.** The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study the use, the effectiveness, and the cost versus benefits of the Jobs Development Investment Grant Program created in this act, the Bill Lee Act credits in Chapter 105 of the General Statutes, and the Industrial Recruitment Competitive Fund. The Study Committee may report the results of its study and any recommendations to the 2004 Regular Session of the 2003 General Assembly and shall make a final report by March 15, 2005, to the 2005

(7)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

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

H1734-ALC-188 [v.2]

General Assembly."

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

H1734-ALYx-145 [v.3]

Date Aug. 1 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS to First Ed

Representative Weiss

moves to amend the bill on page 3, lines 35-36, by adding the following between those lines:

"**SECTION 3.1.** G.S. 105-129.4 is amended by adding a new subdivision to read:

'(b6) No Double Benefit. – A taxpayer that receives a grant under Part 19 of Article 10 of Chapter 143B of the General Statutes may not claim a credit under this Article with respect to the jobs, machinery and equipment, real property, worker training, and research and development expenditures associated with the project for which the taxpayer receives that grant.' "

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 6
(to be filled in by
Principal Clerk)

H1734-ALC-184 [v.4]

Date Aug. 1 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Representative Weiss

moves to amend the bill on page 7, lines 7 – 8
by adding the following between the lines:
"(c) Conflict of Interest. – It is unlawful for a former member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any business or a related member of the business that was awarded a grant under this Part while the former member was serving on the Committee. Violation of this subsection is a Class 1 misdemeanor."

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 7
(to be filled in by
Principal Clerk)

H1734-ALCx-185 [v.5]

Date Aug. 1 ,2002

Comm. Sub. [YES]
Amends Title [YES]
PCS

Representative Weiss

moves to amend the bill on page 1, line 5,
by adding after the phrase "EQUIPMENT;" the following:
"TO REQUIRE A TAXPAYER AND ITS RELATED ENTITIES TO SATISFY ANY OUTSTANDING STATE TAX ASSESSMENTS BEFORE RECEIVING A BILL LEE ACT CREDIT;"

and on page 2, lines 29 – 30,
by adding the following between the lines:
"**SECTION 1.1(a).** G.S. 105-129.4 is amended by adding a new subdivision to read:
`(b7) Final Assessments. – A taxpayer is not eligible for a credit allowed under this Article if, at the time the taxpayer claims an installment or carryforward of the credit, the taxpayer or a related entity of the taxpayer has received a notice of final assessment and that assessment has not been satisfied or otherwise resolved.' ";

and on page 11, lines 7 – 10,
by rewriting the lines to read:
"A business may not receive an annual disbursement of a grant if, at the time of disbursement, the business or a related member of the business has received a notice of final assessment of State tax due and that assessment has not been satisfied or otherwise resolved. A business may receive an annual disbursement of a grant only after the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

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

H1734-ALCx-185 [v.5]

Committee has certified to the State Controller that there are no outstanding final assessments of State tax due and that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this Part in any year until the Secretary of Revenue has certified to the Committee (i) that there are no outstanding final assessments of State tax due against the business or a related member of the business and (ii) the amount of"

SIGNED Jennifer Weiss
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. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE August 1, 2002

Amendment No. 8
(to be filled in by Principal Clerk)

(Rep.) Pope
Sen.)

moves to amend the bill on page 7, line s 7-8

( ) WHICH CHANGES THE TITLE

by adding the following between the lines:

"(c) Sunshine. — Meetings of the Committee are ~~subject to the~~ subject to the Open Meetings requirements of Article 33B of Chapter 143 of the General Statutes. All documents of the Committee including applications for grants are public records governed by Chapter 132 of the General Statutes, ~~and~~ including applicable provisions of that act protecting confidential information."

SIGNED Pope

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 9
(to be filled in by
Principal Clerk)

H1734-ALC-190 [v.1]

Date Aug. 1 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Adopted

Representative Pope

moves to amend the bill on page 5, line 31,
by adding the following at the beginning of the line: "(a) Program. – ";

and on page 6, lines 8 – 9, by adding the following between the lines:
"(b) Ceiling. – The maximum amount of total annual liability for grants in a fiscal year may not exceed twenty million dollars ($20,000,000). No agreement may be entered into that, when considered together with other existing agreements, could cause the State's potential total annual liability for grants in a fiscal year to exceed this amount."

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

3

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1734

AMENDMENT NO. 10
(to be filled in by
Principal Clerk)

Page 1 of 1

H1734-ALC-192 [v.1]

Date Aug. 1 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

YES NO

Representative Pope

moves to amend the bill on page 10, line 43, and page 11, line 5, by deleting the word "may" on each line and substituting "shall";

and on page 11, line 1, by adding the following after the period:
"The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred."

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

(4)

EDITION No. PCS

H. B. No. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE August 1, 2002

Amendment No. 11
(to be filled in by Principal Clerk)

(Rep.) Pope
Sen.)

1 moves to amend the bill on page 7, line 32-33

2 ( ) WHICH CHANGES THE TITLE

3 by adding the following between the lines:

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5 "(10) Certificatim that the project will

6 not be undertaken in North

7 Carolina unless the applicant

8 is awarded a grant."

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SIGNED Rep. Art Pope

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 1734

S. B. No. _____

COMMITTEE SUBSTITUTE ✓

DATE August 1, 2002

Amendment No. 12
(to be filled in by Principal Clerk)

Rep.) McComas
Sen.)

moves to amend the bill on page 10, line 39 and 40

( ) WHICH CHANGES THE TITLE

by inserting between those lines the following subsection:

"(d) Grant recipients are encouraged to use the State ports of North Carolina and must ~~submit~~ include in the report required by subsection (a) of this section a report on the tonnage of any freight moved in ocean borne commerce through the State ports and through any other U.S. port. If freight is moved through a U.S. port, other than the State ports, then the report must ~~include~~ disclose the reasons for using these ports."

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

House Bill 1734:
NC Economic Stimulus and Job Creation Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Reps. Owens and Allen
Date:	July 31, 2002	**Analysis by:**	Y. Canaan Huie
Version:	H1734-CSLYfx-47		Staff Attorney

SUMMARY: ***There are two main components to this bill: changes to the Bill Lee Act and the establishment of a new economic development program. There are different effective dates for the various parts of the bill.***

BACKGROUND: The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case. In 1999, the General Assembly extended the 2002 sunset to 2006.

ANALYSIS: Bill Lee Act Changes. Sections 1 through 3 of this bill make significant changes to the Bill Lee Act. These changes affect the credit for investing in machinery and equipment, the wage standard, and the definition of a development zone.

Machinery and Equipment. Under current law, a taxpayer is allowed a credit for machinery and equipment placed into service during a taxable year that exceeds the applicable threshold based on the location where the machinery and equipment is placed into service. The amount of the credit is equal to 7% of the cost of the machinery and equipment in excess of the applicable threshold. Section 1 of this act makes two changes to this credit. First, the amount of the credit is reduced in enterprise tiers three, four, and five. In those areas, the amount of the credit is reduced to 6%, 5%, and 4%, respectively, of the cost of the machinery and equipment in excess of the applicable threshold. Second, the amount of the threshold is increased in enterprise tiers four and five. In enterprise tier four, the threshold is increased from $500,000 to $1,000,000. In enterprise tier five, the threshold is increased from $1,000,000 to $2,000,000.

Wage standard. Under current law, a taxpayer is eligible for a credit under the Bill Lee Act only if the jobs provided by the taxpayer meet a wage standard. The wage standard is 110% (100% in an enterprise tier one area) of the applicable average weekly wage. The jobs that are included in calculating the wage standard vary depending on the particular credit.

Section 2 of this bill makes three substantive changes to the wage standard. First, this section eliminates the wage standard in enterprise tier one and two areas.

Second, this act eliminates the wage standard for the credit for worker training. In order to be eligible for the credit for worker training, the employee who is being retrained must either (i) occupy a job for which the taxpayer is eligible to claim a credit for creating jobs, or (ii) be trained to operate machinery and equipment for which a taxpayer is eligible to claim a credit for investing in machinery and equipment. Thus, the jobs for which the credit for worker training may be claimed have already been included in a larger group of jobs that has met the wage standard. Often the specific jobs for which worker training is required are lower-paying jobs that could not themselves meet the wage standard. This change allows the credit for worker training to be taken by more taxpayers.

Third, this act makes an allowance for a taxpayer that has a taxable year other than a calendar year. To perform the wage standard test, the taxpayer compares the average weekly wage of certain jobs to the wage standard determined on an annual basis. The test is performed for the calendar year that jobs are created or for which worker training is provided. However, performing a wage standard test based on a calendar year is not feasible because many companies have taxable years that do not coincide with the calendar year. Consequently, the taxpayer can engage in activity that qualifies for a credit during a taxable year that spans two calendar years. If the taxpayer creates jobs in different calendar years, it must compute the combined average weekly wage of the 80 jobs created during its taxable year and compare this average to the county wage standard to determine if it qualifies for a tax credit. It cannot however, compute this average "for the calendar year the jobs are created" as required by the current statute because the jobs are created over the course of two calendar years. Under this bill, the wage standard test would be based on the taxpayer's taxable year and not the calendar year. When a taxable year spans two calendar years, the applicable wage standard is that of the earlier calendar year. In addition to correcting a practical problem, this change generally will be favorable for taxpayers because county wage standards generally trend upward.

Development zones. In 1998, the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate or expand in development zones, which are economically distressed areas located within cities. The statutory conditions for qualifying as a development zone were designed to target only these relatively small, economically distressed areas. The statutory conditions contained loopholes, however, that allowed large areas outside of cities to qualify, even if they were not economically distressed throughout. In 1999, the General Assembly moved to close those loopholes.

Current law defines a development zone as an area that meets all of the following conditions: (1) consists of one or more contiguous census tracts, block groups, or both, (2) has a population of 1,000 or more, at least 20% of whom are below the poverty level, (3) is located at least partly in a city with a population over 5,000, (4) every census tract and census block group in the zone must be located in whole or in part within the primary corporate limits of the city, (5) every census tract and census block group in the zone must have more than 10% of its population below the poverty level, or must be immediately adjacent to a tract or group that has more than 20% of its population below the poverty level, and (6) none of the census tracts or census block groups may be located in another development zone.

This act amends the definition of development zone to include all of a parcel of land that is located partially within the zone if all of the following conditions are met:

- At least 50% of the parcel is located within the zone.
- The parcel was in existence and under common ownership prior to the previous decennial federal census.

- The parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary.

The following enhanced incentives apply in development zones: If a business locates in a development zone, the wage standard it has to meet is the same as for tier one counties -- slightly lower than the standard for other counties under current law and eliminated entirely under Section 2 of this act. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

Jobs Development Investment Grant Program. Section 5 of this act creates a new economic development tool for new and expanding businesses in North Carolina. This tool would be used to attract businesses to the State by allowing a three-member committee to award grants to businesses. The amount of the grants would be based on income tax withholdings from new jobs created by the businesses.

Which projects are eligible for a grant? In order to be eligible for a grant under this Part, the business must create a minimum number of new jobs. The number of new jobs that must be created varies based on the enterprise tier designation of the location where the jobs will be located. For projects located in enterprise tiers one through three, the project must create at least 10 new full-time positions. For projects located in enterprise tiers four and five, the project must create at least 20 new full-time positions. If a project is located in more than one location, the enterprise tier designation of the location in the highest enterprise tier area determines the number of new jobs that must be created.

As with the Bill Lee Act, a business must provide health insurance for all full-time jobs associated with the project in order to be eligible for this new program. The test is the same as under the Bill Lee Act – the business must, for all full-time employees of the project, pay at least 50% of the premiums for health insurance that meets at least the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.

Unlike under the Bill Lee Act, there are few restrictions based on the industry in which the business is engaged. All facilities other than retail facilities are eligible for a grant under this Part.

More generally, the project must satisfy the following conditions in order to be eligible for a grant:

- The project will result in net new employment in the State.
- The project is economically sound and will benefit the people of the State by increasing employment opportunities and strengthening the State's economy.
- The project is consistent with economic development goals for the State.
- A grant is needed in order to secure the project for the State
- The total benefits of the project to the State outweigh the costs associated with the project.

How a grant is obtained? In order to obtain a grant under this Part, the business must apply to the Economic Investment Committee for consideration. The Economic Investment Committee is a three-member committee consisting of the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. The Committee may only act upon unanimous consent. The application for a grant must be under oath, be on a form prescribed by the Committee, and contain any information required by the Committee. At a minimum, the application must contain the following information:

- The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site.

- The names and addresses of the principals or management of the business, and the nature of the business, and the form of business organization under which the business is operated.
- The most recent audited financial statements of the business.
- The number of new jobs proposed to be created by the project.
- An estimate of the withholdings of personal income tax of employees of the project.
- Information concerning other possible locations of the project, and the benefits, including tax benefits or grants, associated with locating the project at that other location.
- Information concerning other State grants for which the business is applying or that it expects to receive.

A group of related business involved in a project may submit a joint application for a grant under this Part.

Any application for a grant must be accompanied by a fee in the amount of $5,000. This fee will be allocated among the agencies responsible for evaluating the application (Department of Commerce, Department of Revenue, and the Office of State Budget and Management) in the discretion of the Committee.

The Committee will evaluate applications to determine which businesses shall receive grants under this Part. The awarding of a grant is solely in the discretion of the Committee. The Committee shall develop criteria for evaluating applications. These criteria shall take into consideration the economic impact of the project, the strategic importance of the project to the State, region, or locality, the quality of the jobs to be created, the quality of the industry and the project, and the environmental impact of the projects. The Committee is exempt from the rulemaking process in developing these criteria.

How is the amount of a grant determined? If the Committee approves a business's application, the Committee will then negotiate and enter into a community economic development agreement with the business. The agreement is a binding commitment on the part of the State to provide the grant for a set number of years, subject to the Committee's right to amend or terminate the agreement under certain limited circumstances. Each agreement shall include a description of the project, the term of the agreement, the number of positions expected to be subject to the grant and a method for determining the number of positions that are subject to the grant, and the amount of the grant as a percentage of the withholdings of personal income tax from eligible positions. The Committee has wide discretion in determining the percentage that determines the amount of a grant under an agreement. The Committee shall develop criteria to be used when negotiating the appropriate percentage. The Committee is exempt from the rulemaking process in developing these criteria. However, at a minimum, the following conditions apply:

- The amount of the grant may not be less than ten percent (10%) or more than eighty percent (80%) of the withholdings associated with new jobs at the project.
- The term of the grant shall not exceed 15 years.
- The percentage used to determine the amount of the grant shall be reduced by one-fourth for any eligible position located in an enterprise tier four or five area.
- Unless the Committee makes a specific determination that the grant should be calculated based on eligible positions created in any year during the term of the agreement, the amount of the grant shall be calculated based only on eligible positions created during the base years, the first two years, of the agreement.

- Unless the Committee makes an explicit finding otherwise, the total amount of all grants provided by the State may not exceed 80% of the withholding of eligible positions.

Use of funds? There are no restrictions on the use of the grant fund by the business. South Carolina has a similar grant program. Under the South Carolina program, grant funds may only be used for certain specific purposes, such as worker training, worker relocation, purchase or construction of real property, and construction or repairs to certain transportation-related real property.

The withholdings retained by the State shall be used in two different ways. First, the withholdings in excess of the percentage negotiated in the agreement shall flow to the General Fund.[1] Second, the withholdings that are included in the agreement, but that are excluded from the grant because the percentage was reduced by one-fourth because the eligible position is located in an enterprise tier four or five area, will be transferred to the Utility Account of the Industrial Development Fund. Under current law, funds in the Utility Account may be used to assist local governments in tiers one and two in constructing or improving utility lines or equipment (amendments to the law regarding the Industrial Development Fund and the Utility Account are discussed later in this summary).[2]

Follow-up on grantee businesses? This bill provides for monitoring of grantee businesses in several ways and allows the Committee to amend or terminate agreements if the business fails to live up to the terms of the agreement or the requirements of this new Part.

The business must submit annual reports to the Committee. At a minimum, the business must submit a copy of its federal and State income tax returns which show business and nonbusiness income, a report that shows withholdings, and a payroll report. This annual submission must also include any additional information that Committee considers necessary to implement the grant program. In addition, the Committee may audit at any time a business receiving a grant. This annual submission must be accompanied by a fee of $1,500. The Committee shall allocate the fee among the agencies responsible for evaluating the submission.

The Committee has a right to amend or terminate the agreement and to recapture all or part of a grant made in previous years under certain circumstances. If the business fails to meet or comply with any term of the agreement or with criteria developed by the Committee, the Committee, in it discretion, may amend the agreement. This amendment may take the form of a lower percentage being used to determine the amount of the grant or of a shorter term for the agreement. If the business fails to meet or comply with any term of the agreement or with criteria developed by the Committee for two consecutive years, the Committee, in its discretion, may terminate the agreement. In addition, in each agreement the Committee must include a provision describing the conditions that will lead to recapture of a grant made in an earlier year. The statute mandates that all agreements contain a provision allowing recapture if the business does

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1 Even though the maximum percentage that may be used to determine the amount of a grant is 80%, there may be no additional revenue from these positions that would flow to the General Fund. This is because most taxpayers over-withhold, meaning that more taxes are withheld than are actually due, resulting in a refund to the taxpayer. Because of this, a grant based on the maximum percentage of 80% could result in a net loss to the General Fund. .

2 The following example will clarify this. Assume a project that is located in an enterprise tier five area is allowed a grant based on 80% of the withholdings of the eligible positions. Because those positions are located in an enterprise tier five area, that percentage is reduced by one-fourth, so that the business is allowed a grant equal to 60% of the withholdings of eligible positions. (80% multiplied by ¾ equals 60%.) Twenty percent of the withholdings of eligible positions would flow to the General Fund, 60% would be given to the business in the form of a grant, and 20% would be transferred to the Utility Account of the Industrial Development Fund.

not maintain operations at the project location or another location approved by the Committee for at least 150% of the term of the grant agreement.

Program evaluation. This bill would require the Committee to make annual reports regarding the program and the funding needed to implement the program. By October 31 of each year, the Committee must publish the following information:

- A listing of each agreement entered into during the previous fiscal year, the cost/benefit analysis conducted with respect to each agreement, a description of each project, and the amount of the initial grant.
- An update on the status of projects under agreements entered into in earlier fiscal years.
- The number, enterprise tier levels, and wage levels of eligible positions created by projects with respect to which grants were awarded.
- The amount of new income tax revenue received by the State related to the projects.
- The criteria developed by the Committee to implement the grant program and in changes in those criteria over the previous year.

In addition, the Committee shall conduct a study annually to determine the amount of funding needed to successfully implement the grant program. The results of that study must be reported to the House of Representatives Finance Committee, the Senate Finance Committee, the House of Representatives Appropriations Subcommittee on Natural and Economic Resources, the Senate Appropriations Committee on Natural and Economic Resources, and the Fiscal Research Division no later than March 1.

Finally, the authority of the Committee to enter into additional agreements expires as of January 1, 2006. This will allow the General Assembly an opportunity to review the program after it has been in effect for a few years in order to determine if the program is meeting its objections.

Miscellaneous changes associated with the program. Sections 7 and 8 of this bill provide exceptions to current law needed to implement the provision of the grant program.

Section 7 allows an exemption from the confidentiality requirements of the Department of Revenue. Generally, the Department of Revenue must keep confidential all information it receives in the course of administering the tax laws. There are numerous, specific exceptions to this requirement. This bill would allow the Department of Revenue to share information with the Economic Investment Committee relating to businesses that are applying for a grant or that are subject to an agreement.

Section 8 allows the Committee an exemption from the rulemaking process.

Industrial Development Fund changes. Section 6 of this bill makes two significant changes to the Industrial Development Fund and to the Utility Account, which is part of that Fund. The Industrial Development Fund provides assistance to local governments for improvements to infrastructure to enable the locality to attract new businesses. Usually, this assistance is provided to make general improvements, such as improvements to or development of industrial parks, and is not tied to luring a specific project.

First, the purposes for which funds in both the Fund and the Account may be used are expanded to allow expenditures for telecommunications and high-speed broadband lines and equipment. Currently funds under both the Fund and the Account may be used for construction of and improvements to water, sewer, gas, and electricity lines and equipment. This change recognizes the growing importance to industry of telecommunications and high-speed broadband.

Second, under current law, funds in the Utility Account may be used to assist local governments located in enterprise tiers one and two only. This bill would expand the focus of the Account to allow funds in the Account to be used to assist local governments in enterprise tier three as well.

Property Tax Technical Correction. Section 9 of this act corrects a statutory reference in two laws dealing with the purposes for which a local government may levy a property tax.

DRAFT

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 1, 2002

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: HB 1734 (NC Economic Recovery and Competitiveness Act)
Proposed House Finance Committee Substitute

FISCAL IMPACT ($MIL.)

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

		FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES:						
Bill Lee Act Changes: State General Fund						
Machinery/Equip. Credit	-		3.64	7.27	10.91	14.54
Wage Test for Tiers 1 & 2	-		-.08	-.16	-.24	-.32
Worker Training Wage Test	-		-.11	-.11	-.11	-.11
			3.45	**7.00**	**10.56**	**14.11**
Job Creation Grant Program			"See Assumptions and Methodology"			

EXPENDITURES: The enactment of the bill is not expected to affect budget requirements of any of the affected agencies.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue, Department of Commerce, Office of State Budget and Management

ISSUE BACKGROUND: The Bill Lee Act is the package of state tax incentives that was first adopted in 1996 and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research/development. The credits apply to activities undertaken by specifically named industrial classifications. For many of the credits, the counties of the State are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth. In general, the lower the tier of a county, the more favorable the incentive.

BILL SUMMARY:

Restructure Machinery and Equipment Credits. Under current law, the targeted statewide investment tax credit is equal to 7% of eligible investment in machinery and equipment. The credit is taken over seven years and applies to the investment that exceeds a certain threshold. The threshold amount varies by tier as follows:

Tier	Threshold	Credit
1	0	7%
2	100,000	7%
3	200,000	7%
4	500,000	7%
5	1,000,000	7%

The threshold is used first to determine eligibility. In addition, the credit is based on the amount of the investment in machinery and equipment that exceeds the threshold amount. The bill restructures the credit rate and threshold by increasing the minimum investment threshold in Tiers 4 and 5 and lowers the credit percentage in Tiers 3 through 5. The new credit schedule would be as follows:

Tier	Threshold	Credit
1	0	7%
2	100,000	7%
3	200,000	6%
4	1,000,000	5%
5	2,000,000	4%

The change is effective for business activities that occur on or after January 1, 2003, but not for those activities occurring on or after that date that are subject to a letter of commitment signed before the date.

Worker Training Credit Wage Test. In order to be eligible for Lee Act credits, taxpayers must meet certain wage tests. These tests are based on the average wage of the company's jobs, calculated based on all jobs at an establishment. The bill eliminates the wage test for the worker training credit. The change is effective for tax years beginning on or after January 1, 2003.

Eliminate Wage Test for Tiers 1 and 2. Under current law, taxpayers applying for the Lee Act credits must meet 100% of the wage standard in Tier 1 and exceed 110% of the wage standard in

the remaining tiers. The bill eliminates the wage standard for Tiers 1 and 2. The change is effective for tax years beginning on or after January 1, 2003.

Development Zone Technical Change. Enhanced Lee Act credits are allowed for projects in development zones (high poverty areas). The bill indicates that a parcel of property partially located in a development zone is considered entirely within the zone if all of the following conditions are met: (1) at least 50% of the parcel is located within the zone; (2) the parcel was in existence and under common ownership prior to the most recent population census; and (3) the parcel is a portion of land made up of one or more tracts or tax parcels of land that is surrounded by a continuous perimeter boundary. This change becomes effective July 1, 2002.

Job Development Investment Grant Program. Establishes the Job Development Investment Grant Program to be administered by the Economic Investment Committee. Under the program, the Committee may enter into agreements with businesses to provide grants in the form of withholding tax payment givebacks. Before entering into an agreement, the Committee must find that all the following conditions are met:

(1) The project proposed by the business will create, during the term of the agreement, a net increase in employment in this State.

(2) The project is economically sound and will benefit the people of this State by increasing opportunities for employment and by strengthening this State's economy.

(3) The project is consistent with economic development goals for the State and for the area where it will be located.

(4) The project is at substantial risk of locating in another state.

(5) A grant is necessary to secure the project for this State.

(6) The total benefits of the project to the State outweigh its costs and render the grant appropriate for the project.

A business may apply to the Committee for a grant for any project that creates the minimum number of eligible positions as set out in the table below. If the project will be located in more than one enterprise tier area, the location with the highest enterprise tier area designation determines the minimum number of eligible positions that must be created.

Enterprise Tier Area	Number of Eligible Positions
Tier One	10
Tier Two	10
Tier Three	10
Tier Four	20
Tier Five	20

A project that consists solely of retail facilities is not eligible for a grant. If a project consists of both retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities is eligible for a grant, and only the withholdings from employees in eligible positions that are employed exclusively in the portion of the project that represents non-retail facilities may be used to determine the amount of the grant. If a warehouse facility is part of a retail facility and supplies only that retail facility, the warehouse facility is not eligible for a grant. Catalog distribution centers are not considered retail facilities.

Just like the Bill Lee Act, a business must provide health insurance for all of the full-time employees of the project for which the grant is made.

The Economic Investment Committee will consist of the following members:

(1) The Secretary of Commerce.
(2) The Secretary of Revenue.
(3) The Director of the Office of State Budget and Management.

The Committee may act only upon the unanimous consent of the members. A business shall apply, under oath, to the Committee for a grant on a form prescribed by the Committee that includes at least all the following:

(1) The name of the business, the proposed location of the project, and the type of activity in which the business will engage at the project site or sites.
(2) The names and addresses of the principals or management of the business, the nature of the business, and the form of business organization under which it is operated.
(3) The most recent audited financial statements of the business and any other financial information the Committee considers necessary.
(4) The number of eligible positions proposed to be created during the base years and thereafter, and the salaries for these positions.
(5) An estimate of the total withholdings.
(6) Information concerning other states being considered for the project and the nature of any benefits the company would enjoy as a result of locating in those states.
(7) Any other information necessary for the Committee to evaluate the application.

A business may apply, in one consolidated application in a form and manner determined by the Committee, for a grant on its own behalf as a business and for grants on behalf of the related members of the business who may qualify.

The Committee will consider a application by a business for grants on behalf of its related members only if the related members for whom the application is submitted have assigned to the business any claim of right the related members may have under this program to apply for grants individually during the term of the agreement and have agreed to cooperate with the business in providing to the Committee all the information required for the initial application and the agreement, and any other information the Committee may require. The applicant business is responsible for providing to the Committee all the information required.

If a business applies for a grant on behalf of its related members, the related members included in the application may be permitted to meet the qualifications for a grant collectively by participating in a project that meets the requirements of the program. The amount of a grant may be calculated as if the related members were all collectively one business entity. Any conditions for a grant, other than the number of eligible positions created, apply to each related member

who is listed in the application as participating in the project. The grants awarded shall be paid to the applicant business. A grant received by a business may be apportioned to the related members in a manner determined by the business. In order for an agreement to be executed, each related member included in the application must sign the agreement and agree to abide by its terms.

When filing an application under this section the business must pay the Committee a fee of $5,000. The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this section among the agencies responsible for evaluating the application. The proceeds of the fee are receipts of the agency to which they are credited.

The bill establishes extensive reporting requirements for the Committee.

The Committee is required to conduct a study to determine the minimum funding level required to implement the program successfully and to report the results of this study no later than March 1 of each year.

The amount of the grant awarded in each case shall be a percentage of the withholdings of eligible positions. The percentage shall be no less than 10% and no more than 80% of the withholdings of the eligible positions for a period of years. The percentage used to determine the amount of the grant shall be based on criteria developed by the Committee after considering the following:

(1) The number of eligible positions to be created.
(2) The expected duration of those positions.
(3) The type of contribution the business can make to the long-term growth of the State's economy.
(4) The amount of other financial assistance the business will receive from the State for the project.
(5) The total dollar investment the business is making in the project.

The term of the grant shall not exceed 15 years starting with the first year a grant is made.

The grant percentage may be based only on eligible positions created during the base years (first two years of program) unless the Committee makes an explicit determination that the grant shall also be based on additional eligible positions created during the remainder of the term of the grant.

The percentage established in the agreement shall be reduced by 25% for any eligible position that is located in an enterprise tier four or five area.

A business that is receiving any other grant by operation of State law may not receive grant monies under this program if the total state grants exceed (80%) of the withholdings of the business, unless the Committee makes an explicit finding that the additional grant is necessary to secure the project.

Each community economic development agreement shall include the following:

(1) A detailed description of the proposed project that will result in job creation and the number of new employees to be hired in the base years and later years.
(2) The term of the grant and the criteria used to determine the first year for which the grant may be claimed.
(3) The number of eligible positions that are subjects of the grant and a description of those positions and the location of those positions.
(4) The amount of the grant based on a percentage of withholdings.
(5) A method for determining the number of new employees hired during a grant year.
(6) A method for the business to report annually to the Committee the number of eligible positions for which the grant is to be made.
(7) A requirement that the business report to the Committee annually the aggregate amount of withholdings during the grant year.
(8) A provision permitting an audit of the payroll records of the business by the Committee from time to time as the Committee considers necessary.
(9) A provision that permits the Committee to amend an agreement pursuant to certain guidelines.
(10) A provision that requires the business to maintain operations at the project location or another location approved by the Committee for at least 150% of the term of the grant and a provision to permit the Committee to recapture all or part of the grant at its discretion if the business does not remain at the site for the required term.
(11) A provision that requires the business to maintain employment levels in this State at the level of the year immediately preceding the base years.
(12) A provision establishing the conditions under which the grant agreement may be terminated and grant funds recaptured by the Committee.
(13) A provision stating that unless the agreement is amended or terminated the agreement is binding and constitutes a pledge and a continuing appropriation of the amount of the grant.

A community economic development agreement may contain the following:

(1) A provision setting out allowed variation in the terms of the agreement that will not subject the business to amendment or termination of the agreement
(2) A provision that allows the Committee to consider entering into an additional agreement with the business within five years after the execution of the agreement regardless of whether the program is still in effect at that time if all of the following conditions are met:

a. The business's decision to locate in North Carolina is contingent upon the ability to have a later project considered for a grant.
b. The later project is described in detail in the agreement. This description must include the nature of the additional project, the anticipated investment and new jobs associated with the later project, the anticipated location of the later project, the anticipated wage of the

new jobs, and the relationship of the later project to the business's current project.

c. The later project will create at least 75 new jobs in counties currently designated as enterprise tier one, two, or three areas, or 150 new jobs in counties currently designated as enterprise tier four and five areas.

If the current program is still in effect at the time the business applies for a grant for the later project, the business must apply for a grant as it exists at that time. If the current grant program is no longer in effect at the time the business applies for a grant for the later project, the business must apply for a grant according to the provisions of the grant program as it existed immediately before it was repealed or otherwise became ineffective.

No later than February 1 of each year, for the preceding grant year, every business that is awarded a grant shall submit to the Committee a copy of its State and federal tax returns showing business and nonbusiness income and a report showing withholdings as a condition of its continuation in the grant program. In addition, the business shall submit to the Committee an annual payroll report showing the eligible positions that are created during the base years and the new eligible positions created during each subsequent year of the grant. When making a submission under this section the business must pay the Committee a fee of $1,500. The fee is due at the time the submission is made. The Committee shall determine the allocation of the fee imposed by this section among the agencies responsible for evaluating the submission. The proceeds of the fee are receipts of the agency to which they are credited.

The Committee may require any information that it considers necessary to effectuate the provisions of this program. The Committee may audit any business receiving a grant at any time.

If the business receiving a grant fails to meet or comply with any condition or requirement set forth in an agreement or with criteria developed by the Committee, the Committee may amend the agreement to reduce the amount of the grant or the term of the agreement. The reduction of the grant is applicable to the grant year immediately following the grant year in which the Committee amends the agreement.

If a business fails to maintain employment at the levels stipulated in the agreement or otherwise fails to comply with any condition of the agreement for any two consecutive years, the Committee may terminate the agreement.

A qualifying business may receive an annual disbursement of a grant only after the Committee has certified to the State Controller that the business has met the terms and conditions of the agreement. No amount shall be disbursed to a business as a grant under this program in any year until the Secretary of Revenue has certified to the Committee the amount of withholdings received in that year by the Department of Revenue from the business. A qualifying business that has met the terms of the agreement shall make an annual certification of this to the Committee. The Committee shall verify this information and certify to the State Controller that the terms of the agreement have been met. The Committee shall further certify to the State Controller the amount of a grant for which the business is eligible under the agreement and the

amount of a grant for which the business would be eligible under the agreement without regard to the 25% grant reduction in Tiers 4 and 5. The State Controller shall remit a check to the business in the amount of the certified grant amount within 90 days of receiving the certification of the Committee.

At the time the State Controller remits a check to a business, the State Controller shall transfer to the Utility Account of the Industrial Development Fund an amount equal to the amount certified by the Committee as the difference between the amount of the grant and the amount of the grant for which the business would be eligible without regard to the 25% reduction for Tiers 4 and 5.

In developing criteria for the awarding of grants and for determining the percentage upon which the amount of a grant is based, the Economic Investment Committee shall consider criteria that address the following:

(1) Economic impact of the project.
   a. Impact on gross regional product and gross State product.
   b. Costs and benefits of the project to the State, including the expected return on investment made in the project by the State.
   c. Number of direct jobs that will be created by the project, the wages of those jobs, and the total payroll for the project.
   d. Number of induced short-term, project-related jobs expected to be generated by the project as well as the number of long-term permanent jobs expected to be generated indirectly in the economy as a result of the project.
   e. Dollar value of the investment, including the size of the investment in real versus personal property and expected depreciation rates.
   f. Economic circumstances of the county and region, including the extent to which the project will serve to mitigate unemployment.
   g. The expected time frame during which the project is expected to pay back in State tax revenues the amount of any grants to be paid out.
   h. The economic demands the project is expected to place upon the community or communities in which it will locate.

(2) Strategic importance of the project to the State, region, or locality.
   a. The extent to which the project builds or enhances an industrial cluster.
   b. The extent to which the project falls within a classification of business and industry that the Department of Commerce regards as a target for growth and expansion in the State.
   c. The ability of the project to attract follow-on investment in the State by suppliers and vendors.
   d. The extent to which the project serves to maintain and grow jobs in the State in a business undergoing an internal restructuring or rationalization process.
   e. The extent to which the project can be expected to contribute significantly to and support the local community.
   f. The degree to which the project can be identified as at-risk of being developed or located in another state and the degree to which a grant

would play a role in any final decision to develop or locate the project in this State.

(3) Quality of jobs.
   a. The wage level and status of the jobs to be created.
   b. The quality and value of benefits offered by the company.
   c. The potential for employee advancement.
   d. The extent of training programs offered by the company.
   e. The sustainability of the jobs in the future.
   f. The workplace safety record of the company.

(4) Quality of the industry and the project.
   a. The nature of the project and the projects' relationship to the larger business of the company.
   b. The nature of the industrial classification of the project and the nature of the business of the company undertaking it.
   c. The long-term prospects for growth at the project site or sites.
   d. The long-term prospects for growth of the company and the industry within the United States.
   e. The financial stability of the company associated with the project.

(5) Environmental impact of the project.
   a. The nature of the business to be conducted.
   b. The ability of the project to satisfy State, federal, and local environmental law and regulations.

The bill also makes two changes to the Industrial Development Fund (IDF) and to the Utility Account, which is part of that Fund. The IDF provides assistance to local governments for improvements to infrastructure to enable the locality to attract new businesses. Usually, this assistance is provided to make general improvements, such as improvements to or development of industrial parks, and is not tied to luring a specific project.

The first change is to expand the purposes for which funds in both the Fund and the Account may be used to allow expenditures for telecommunications and high-speed broadband lines and equipment. In addition, the bill would expand the focus of the Utility Account to allow funds to be used to assist local governments in enterprise Tier 3 as well as Tiers 1 and 2 (current law).

The provisions dealing with the job development investment grant are effective when the bill becomes law.

ASSUMPTIONS AND METHODOLOGY:

Bill Lee Act Changes. The fiscal impact estimates for the proposals modifying the Bill Lee Act are based on a sampling of 1999 tax returns filed by businesses reporting or claiming Lee Act credits. The sampling was carried out by the Department of Commerce, based on a universe of 566 firms claiming credits, and was based on scientific methodology. The actual sample size

represented 39% of the firms. Since some firms in the sample had facilities at two or more sites, there were a total of 260 locations included in the sample.

Job Development Investment Grant. This initiative represents a significant change from the structure of the Bill Lee Act incentives. Eligibility language in the bill leaves the determination to the Economic Investment Committee. This committee will have broad discretion to negotiate the terms of an agreement, including the amount of the grant and the number of years for which the grant is provided. This makes it impossible to determine the usage of the grant program.

In lieu of an actual projection, the Department of Commerce developed a simulation of the impacts under a specific set of assumptions. The first step in the model was a discussion with industrial recruitment personnel within Commerce. This discussion suggested approximately 140 prospects per year. Of this amount it was assumed that about 70 would be new projects of interest under the program. The next step was to assume 30 would qualify for a grant, with 22 of the projects resulting in an actual agreement. Of this total, 10 units would be located in Tiers 4 and 5 and the remaining 12 projects would be allocated equally to Tiers 1 through 3. For the new jobs in Tiers 4 and 5, an average salary of $40,000 was used. The salary amount for Tiers 1 through 3 was $30,000. The model assumed that withholding taxes would amount to 6% of total salary. Each project was based on 200 employees. Annual salary growth of 4% was used for future years. Finally, the term of the grant was assumed to be 10 years.

Job Development Investment Grant ($Million)

State Fiscal Year	Withholding Tax Collected	Amount Retained By General Fund	Amount Retained By Taxpayer	Rural Infrastructure Allocation
03-04	9.48	1.90	6.58	1.00
04-25	19.53	3.91	13.55	2.08
05-06	30.22	6.04	20.93	3.24
06-07	31.42	6.28	21.77	3.37
07-08	32.68	6.54	22.64	3.50
08-09	34.00	6.80	23.55	3.65
09-10	35.34	7.07	24.48	3.79
10-11	36.79	7.36	25.49	3.95
11-12	38.27	7.65	26.51	4.10
12-13	39.81	7.96	27.58	4.27
13-14	27.36	5.47	18.92	2.96
14-15	14.10	2.82	9.74	1.54

DO GOVERNMENT INCENTIVES ATTRACT AND RETAIN INTERNATIONAL INVESTMENT? A STUDY OF FOREIGN-OWNED FIRMS IN NORTH CAROLINA

by

Dennis A. Rondinelli 919 962-2678 - office
and
William J. Burpitt

1999

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DO GOVERNMENT INCENTIVES ATTRACT AND RETAIN INTERNATIONAL INVESTMENT? A STUDY OF FOREIGN-OWNED FIRMS IN NORTH CAROLINA

Abstract

In an era of strong global competition, national, state, and local governments are vying to attract and retain investment by international firms. Over the past decade, state and local governments in the United States have increased the range and value of publicly-funded incentives for businesses to invest in their jurisdictions. But questions concerning the effectiveness, appropriateness, and equity of such incentives and their impacts on influencing domestic and international firms to choose locations in a state or locality continue to be debated.

A survey of executives in 118 internationally-owned firms in North Carolina reveals that they rank state incentives low in a list of factors that they believe attract foreign-owned companies and retain them in the state. Labor force, transportation, quality of life, and overall business climate factors are consistently ranked highest by business executives, and state tax, finance, plant services, and marketing assistance are consistently ranked low. These findings confirm the conclusions of other studies in the United States and abroad that state incentives play only a marginal role in the location decisions of private firms. Critics of government incentives contend that they are not effective in attracting and retaining private investment, and can divert public expenditures from investments in human resources, quality of life, infrastructure, and services that business executives consider more important in their location decisions.

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N. C. Economic Stimulus and Job Creation Act

The Need for Competitive Investment Tools to Recruit Jobs and Investment to N.C

In 2001 alone, more than 66,000 North Carolinians lost jobs. This number exceeded the 2000 year total by 99% -- and 2000 was a record year for job layoffs. So while every state is suffering from the weakened economy, North Carolina is suffering more than most.

Jobs are disappearing even in "new economy" firms of Research Triangle Park, at least in the short term. But the long-term damage – the real damage -- is being done in traditional industries.

Textiles, furniture, and apparel plants are shutting down at a record pace and moving overseas to take advantage of new free trade policies. Those jobs are gone. And they aren't coming back.

The Need for Competitive Investment Tools

To make the situation worse, our competitor states have developed sharper, more precise, and more powerful business incentives to attract new industries thinking of relocating. And they use these tools to compete against us every day. In a study done last year by consultants to the Department of Commerce, North Carolina's incentives were determined to be worthwhile investments, but not as competitive, targeted or flexible as our competitors.

- North Carolina consistently ranked near the lowest or last in overall incentive value over a one-, five- and ten-year period.
- Companies choosing to locate or grow in North Carolina will pay a greater financial price than in other states.
- North Carolina does not have access to the same level of this discretionary spending as do many of our competitors.

Economic Development Board: A Fresh Look at Incentives

As a part of the state's ongoing efforts to ensure that the William S. Lee Act and other incentives programs are the best investment they can be, the Governor's Economic Development Board took a fresh look at incentives. The goal: Make our state's recruitment and retention strategy more flexible, and give North Carolina the ability to aggressively seek high-skilled, good-paying jobs in the new economy.

Recommendations contained in House Bill 1734, The N. C. Economic Stimulus and Job Creation Act:

- Enact a targeted, negotiated Job Development Investment Grant Program modeled on similar programs in states like South Carolina and New Jersey.
- Modify William S. Lee Act to heighten its use as a competitive tool and to fund more targeted incentive programs
    - Reduce machinery and equipment tax credit rate and raise thresholds in more prosperous counties.
    - Alter Worker Training Credit to increase its utilization.
    - Remove or loosen wage standard requirement to assist the poorest counties in recovering from recent job losses.
    - Correct wrinkle in definition of "development zones."

Job Development Investment Grant: Sunset Eliminated ($Million)				
State Fiscal Year	**Withholding Tax Collected**	**Amount Retained By General Fund**	**Amount Retained By Taxpayer**	**Rural Infrastructure Allocation**
03-04	9.48	1.90	6.50	1.00
04-25	19.53	3.91	13.99	2.08
05-06	36.22	6.04	20.93	3.24
06-07	41.70	8.30	28.87	4.49
07-08	54.06	16.70	37.41	5.84
08-09	67.37	13.25	46.61	7.29
09-10	81.61	15.93	56.49	8.84
10-11	96.99	18.79	67.05	10.91
11-12	113.36	21.81	78.38	12.30
12-13	130.92	29.01	90.52	14.22
13-14	135.67	29.58	93.79	14.79
14-15	140.85	26.17	97.30	15.38
15-16	146.48	26.78	101.19	16.00
16-17	152.34	27.42	105.24	16.64
17-18	158.43	28.09	109.65	17.30

Tax Comparision Between North Carolina and South Carolina

	North Carolina	South Carolina
Sales Tax	4.5% state 2% (99 counties) 2.5% Mecklenburg	5% state 1% (26 counties) 2% (2 counties)
Individual Income Tax	top rate=8.25%	top rate=7%
Corporate Income Tax	6.9%	5%

MINUTES
HOUSE FINANCE COMMITTEE

August 6, 2002

The House Committee on Finance met on Thursday, August 6, 2002 in Room 544 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairmen Allen, Buchanan, Luebke and Wainwright, Vice Chairs Hill and Jarrell, and Representatives Alexander, Capps, Cox, Cunningham, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McMahan, Morris, Pope, Rayfield, Weiss, Willingham, and Womble. The following Sergeant-at-Arms staff was present: Bob Fowler, Bill Freeman, Dusty Rhodes and Walter Spell. Staff including Cindy Avrette, Richard Bostic, Trina Griffin, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and introduced the following pages: Chip Farrar, Chatham County, sponsored by Representative Hackney, Andrew Lamar, Randolph County, sponsored by Representative Culp, Angela Sunday, Forsyth County, sponsored by Representative Womble and Kristen Wilson, Pitt County, sponsored by Representative Nye.

Senator Kerr, bill sponsor SB 1416, A BILL TO BE ENTITLED AN ACT TO IMPROVE THE LOW-INCOME HOUSING TAX CREDIT BY MAKING IT SIMPLER AND LESS COSTLY WHILE PROVIDING THE SAME LEVEL OF INCENTIVES FOR THE CONSTRUCTION OF LOW-INCOME HOUSING AND TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE, was recognized by Chairman Buchanan to explain the bill. Senator Kerr gave a brief explanation of the bill. Senator Kerr explained the bill does two things: modifies the formula for calculating the state estate tax on estates with property in more than one state and modifies the low-income housing tax credit in several ways. Chairman Buchanan, upon the request of Senator Kerr, recognized the public to address the committee on SB 1416. Bill Kratt, North Carolina Bar Association, Robert Kucab, North Carolina Housing Finance Authority, Sabra Faires, North Carolina Department of Revenue, Franklin Pendergraph, Pendergraph, LLC, and Mike Hurst, Regency Development, were all recognized to speak on the bill. Everyone agreed this bill had been thoroughly studied and enthusiastically endorsed the bill. Chairman Buchanan recognized members of the committee for questions and after a brief discussion; Representative Weiss was recognized for a motion to give SB 1416 a favorable report. The motion carried. A copy of the bill, summary and fiscal note is attached.

SB 1407 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A CONTRACT RIGHT REGARDING THE TIMING OF PAYMENTS UNDER CONTRACTS REQUIRING REIMBURSEMENT OF FEDERAL FUEL EXCISE TAXES AND TO MAKE VARIOUS MOTOR FUEL EXCISE TAX CHANGES, was the next bill on the agenda for discussion. Senator Kerr, bill sponsor, was recognized to explain the bill. After a brief explanation, Gary Harris, Vice President of North Carolina Petroleum Markers Association, was recognized to speak on the bill. Mr. Harris said NCPMA supported the bill and there was no opposition to

the bill. Representative Cox made a motion to give the bill a favorable report. The motion passed and SB 1407 was given a favorable report.

Chairman Buchanan announced Finance would meet at 8:30 a.m., Wednesday, August 7, 2002, in 544 LOB. SB 1037 No Air Permit Required Until Facility Operational, sponsored by Senator Hoyle and HB 1520 Extend Qualified Business Venture Tax Credit, sponsored by Representative Allen would be on the agenda.

The meeting adjourned the meeting at 9:25 a.m.

Respectfully submitted,

Charles Buchanan
Representative Charles Buchanan
Chairman

Glenda O Jones
Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

August 6, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen — *Representative Paul Luebke*
Representative Charles Buchanan — *Representative William Wainwright*

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1407 Contracts To Reimburse Fuel Tax—Senator Kerr

SB 1416 Housing Tax Credit Changes/Estate Tax Changes—Senator Kerr

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — August 6, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tamra Porter	Martin Taylor + Ellis
Angie Harris	MTE
Dick Carlton	Carlton & Alexander
Christopher Allen	NC DOR
Angela Altice	NCDOR
Mark Bragg	Capitol Tours
Tim Mills	NC Home Builders Association
Don Carrington	Locke Foundation
Diana Wilkens	Mercer & Assoc
Sam McEwen	NCDOR
Greg Rafford	NCDOR

VISITOR REGISTRATION SHEET

HOUSE FINANCE — August 6, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	NC DOR
BOB KUCAB	NCATA
MARK SHELBURNE	"
Lee VanDeCarr	Pendergraft LLC
MICHAEL HUNTER	REGENCY DEVELOPMENT
FRANKIE Pendergraph	Pendergraft, LLC
Roger Earnhardt	CICNC, Raleigh
Larry Bentley	LBA
BILL SCOGGIN	KENNEDY COV. [illegible]
Alice Garland	EC
Paul Stock	NC BANKERS ASSN.

VISITOR REGISTRATION SHEET

HOUSE FINANCE — August 6, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sharon Matthews	DOT-DMV
Michelle Frazier	NC Bar Ass'n
Bill Kratt	NC Bar Ass'n
Gary Harris	NC Petroleum Marketers Assoc.
Doug Howey	NC Petroleum Marketers Assoc.
Jeff Rau	
Margaret Patrone	NC Housing Finance Agency
Letitia Whitcomb	NC State Water
Lisa Walter	NC CoNet

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1416 A BILL TO BE ENTITLED AN ACT TO IMPROVE THE LOW-INCOME HOUSING TAX CREDIT BY MAKING IT SIMPLER AND LESS COSTLY WHILE PROVIDING THE SAME LEVEL OF INCENTIVES FOR THE CONSTRUCTION OF LOW-INCOME HOUSING AND TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 1416
Finance Committee Substitute Adopted 7/24/02
Third Edition Engrossed 7/29/02

Short Title: Housing Tax Credit Chngs/Estate Tax Chngs. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE LOW-INCOME HOUSING TAX CREDIT BY MAKING IT SIMPLER AND LESS COSTLY WHILE PROVIDING THE SAME LEVEL OF INCENTIVES FOR THE CONSTRUCTION OF LOW-INCOME HOUSING AND TO MODIFY THE FORMULA FOR CALCULATING NORTH CAROLINA ESTATE TAX ON ESTATES WITH PROPERTY IN MORE THAN ONE STATE.

The General Assembly of North Carolina enacts:

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

"Article 3E.

"Low-Income Housing Tax Credits.

"**§ 105-129.40. Definitions applicable to Article.**

The definitions in section 42 of the Code and the following definitions apply in this Article:

(1) Housing Finance Agency. – The North Carolina Housing Finance Agency established in G.S. 122A-4.

(2) Pass-Through Entity. – Defined in G.S. 105-129.35.

"**§ 105-129.41: Reserved.**

"**§ 105-129.42. Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003.**

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

(1) Qualified Allocation Plan. – The plan governing the allocation of federal low-income housing tax credits for a particular year, as approved by the Governor after a public hearing and publication in the North Carolina Register.

(2) Qualified North Carolina Low-Income Housing Development. – A qualified low-income project or building that is allocated a federal tax

credit under section 42(h)(1) of the Code and is described in subsection (c) of this section.

(3) Qualified Residential Unit. – A housing unit that meets the requirements of section 42 of the Code.

(b) Credit. – A taxpayer who is allocated a federal low-income housing tax credit under section 42 of the Code to construct or substantially rehabilitate a qualified North Carolina low-income housing development is allowed a credit equal to a percentage of the development's eligible basis, as determined pursuant to section 42(d) of the Code. For the purpose of this section, eligible basis is calculated based on the information contained in the carryover allocation and is not recalculated to reflect subsequent increases or decreases. No credit is allowed for a development that uses tax-exempt bond financing.

(c) Developments and Amounts. – The following table sets out the housing developments that are qualified North Carolina low-income housing developments and are allowed a credit under this section. The table also sets out the percentage of the development's eligible basis for which a credit is allowed. The designation of a county or city as Low Income, Moderate Income, or High Income and determinations of affordability are made by the Housing Finance Agency in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. A change in the income designation of a county or city after a federal credit is allocated does not affect the percentage of the developer's eligible basis for which a credit is allowed. The affordability requirements set out in the chart apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited under subsection (h) of this section.

Type of Development	Percentage of Basis for Which Credit Is Allowed
Forty percent (40%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of area median income and the units are in a Low-Income county or city.	Thirty percent (30%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is fifty percent (50%) or less of the area median income and the units are in a Moderate-Income county or city.	Twenty percent (20%)
Fifty percent (50%) of the qualified residential units are affordable to households whose income is forty percent (40%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)
Twenty-five percent (25%) of the qualified residential units are affordable to households whose income is thirty percent (30%) or less of the area median income and the units are in a High-Income county or city.	Ten percent (10%)

(d) Election. – When a taxpayer to whom a federal low-income housing credit is allocated submits to the Housing Finance Agency a request to receive a carryover allocation for that credit, the taxpayer must elect a method for receiving the tax credit allowed by this section. A taxpayer may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the Housing Finance Agency. Neither a direct tax refund nor a loan received as the result of the transfer of the credit is considered taxable income under this Chapter.

Under the direct tax refund method, a taxpayer elects to apply the credit allowed by this section to the taxpayer's liability under Article 4 of this Chapter. If the credit allowed by this section exceeds the amount of tax imposed by Article 4 for the taxable year, reduced by the sum of all other credits allowable, the Secretary must refund the excess. In computing the amount of tax against which multiple credits are allowed, nonrefundable credits are subtracted before this credit. The provisions that apply to an overpayment of tax apply to the refundable excess of a credit allowed under this section.

Under the loan method, a taxpayer elects to transfer the credit allowed by this section to the Housing Finance Agency and receive a loan from that Agency for the amount of the credit. The terms of the loan are specified by the Housing Finance Agency in accordance with the Qualified Allocation Plan.

(e) Exception When No Carryover. – If a taxpayer does not submit to the Housing Finance Agency a request to receive a carryover allocation, the taxpayer must elect the method for receiving the credit allowed by this section when the taxpayer submits to the Agency federal Form 8609. A taxpayer to whom this subsection applies claims the credit for the taxable year in which the taxpayer submits federal Form 8609.

(f) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this Article does not distribute the credit among any of its owners. The pass-through entity is considered the taxpayer for purposes of claiming the credit allowed by this Article. If a return filed by a pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity, the credit allowed under this Article does not affect the entity's payment of tax on behalf of its owners.

(g) Return and Payment. – A taxpayer may claim the credit allowed by this section on a return filed for the taxable year in which the taxpayer receives a carryover allocation of a federal low-income housing credit. The return must state the name and location of the qualified low-income housing development for which the credit is claimed.

If a taxpayer chooses the loan method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the amount of credit allowed the taxpayer. The Agency must loan the taxpayer the amount of the credit on terms consistent with the Qualified Allocation Plan. The Housing Finance Agency is not required to make a loan to a qualified North Carolina low-income housing development until the Secretary transfers the credit amount to the Agency.

If the taxpayer chooses the direct tax refund method for receiving the credit allowed under this section, the Secretary must transfer to the Housing Finance Agency the refundable excess of the credit allowed the taxpayer. The Agency holds the refund due

the taxpayer in escrow, with no interest accruing to the taxpayer during the escrow period. The Agency must release the refund to the taxpayer upon the occurrence of the earlier of the following:

(1) The Agency determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least fifty percent (50%) of the activities included in the development's eligible basis.

(2) Within 30 days after the development is placed in service date.

(h) Forfeiture. – A taxpayer that receives a credit under this section must immediately report any recapture event under section 42 of the Code to the Housing Finance Agency. If the taxpayer or any of its owners are required under section 42(j) of the Code to recapture all or part of a federal credit with respect to a qualified North Carolina low-income development, the taxpayer forfeits the corresponding part of the credit allowed under this section. This requirement does not apply in the following circumstances:

(1) When the recapture of part or all of the federal credit is the result of an event that occurs in the sixth or a subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.

(2) The taxpayer elected to transfer the credit allowed by this section to the Housing Finance Agency.

(i) Liability From Forfeiture. – A taxpayer that forfeits all or part of the credit allowed under this section is liable for all past taxes avoided and any refund claimed as a result of the credit plus interest at the rate established under G.S. 105-241.1(i). The interest rate is computed from the date the Secretary transferred the credit amount to the Housing Finance Agency. The past taxes, refund, and interest are due 30 days after the date the credit is forfeited. A taxpayer that fails to pay the taxes, refund, and interest by the due date is subject to the penalties provided in G.S. 105-236.

"**§ 105-129.43. Substantiation.**

A taxpayer allowed a credit under this Article must maintain and make available for inspection any information or records required by the Secretary of Revenue or the Housing Finance Agency. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer.

"**§ 105-129.44. Report.**

The Department of Revenue must report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credit allowed in this Article.

(2) The location of each qualified North Carolina low-income building or housing development for which a credit was claimed.

(3) The total cost to the General Fund of the credits claimed.

"**§ 105-129.45. Sunset.**

This Article is repealed effective January 1, 2006. The repeal applies to developments to which federal credits are allocated on or after January 1, 2006."

SECTION 2. G.S. 105-129.16B is recodified as G.S. 105-129.41 and reads as rewritten:

"**§ 105-129.41. Credit for low-income ~~housing.~~housing awarded a federal credit allocation before January 1, 2003.**

(a) ~~(Effective until January 1, 2005)~~ Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

~~(a) (Effective January 1, 2005) Credit. – A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).~~

(a1) Tax Election. – The credit allowed in this section is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(a2) Cap. – The credit allowed in this section may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this section against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

(b) Timing. – The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building. During the first taxable year in which the credit allowed under this section may be taken with respect to a building, the amount of the installment must be multiplied by the applicable fraction under section 42(f)(2)(A) of the Code. Any reduction in the amount of the first installment as a result of this multiplication is

carried forward and may be taken in the first taxable year after the fifth installment is allowed under this section.

(b1) Allocation. – Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as ~~the amount of credit allocated to an owner does not exceed the owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the federal credit is first claimed.~~an owner's adjusted basis in the pass-through entity, as determined under the Code at the end of the taxable year in which the federal credit is first claimed, is at least forty percent (40%) of the amount of credit allocated to that owner. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) ~~Definitions. – The definitions in section 42 of the Code apply in this section. In addition, as~~Qualifying Buildings. – As used in this section the term "qualified North Carolina low-income building" means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.

(1a) ~~(Expires January 1, 2005)~~ It is located in a county that, at the time the federal credit is allocated to the building, has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised on September 25, 1999. Those counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. – If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. If, in one of the five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(e) Forfeiture for Disposition. – If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer must report the recapture event to the Secretary and to the Housing Finance Agency. The taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated. This subsection does not apply when the recapture of part or all of the federal credit is the result of an event that occurs after the credit period described in subsection (b) of this section.

(f) Forfeiture for Change in Ownership. – If an owner of a pass-through entity that has qualified for the credit allowed under this section disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the federal credit is first claimed and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the federal credit is first claimed, the owner must report the change to the Secretary and to the Housing Finance Agency. The owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed. Forfeiture as provided in this subsection is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(g) Liability From Forfeiture. – A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from

the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

SECTION 3. G.S. 105-129.15(4a) is repealed.

SECTION 4. G.S. 105-129.15A reads as rewritten:

"**§ 105-129.15A. Sunset.**

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in service on or after January 1, 2006. ~~The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006. (2000-173, s. 1(d).)~~"

SECTION 5. G.S. 105-129.17(a) reads as rewritten:

"(a) Tax Election. – The credits allowed in this Article are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. ~~In addition, the credit allowed under G.S. 105-129.16B is allowed against the gross premiums tax levied in Article 8B of this Chapter.~~ The taxpayer must elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of a credit must be claimed against the same tax."

SECTION 6. G.S. 105-129.19(2a) is repealed.

SECTION 7. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

...

(28) To exchange information concerning a tax credit claimed under Article 3E of this Chapter with the North Carolina Housing Finance Agency."

SECTION 8. G.S. 105-256(a) is amended by adding a new subdivision to read:

"(7) The reports required under G.S. 105-129.19 and G.S. 105-129.44."

SECTION 9. G.S. 105-32.2(b) reads as rewritten:

"(b) Amount. – The amount of the estate tax imposed by this section is the maximum credit for state death taxes allowed under section 2011 of the Code. If any property in the estate is located in a state other than North Carolina, the amount of tax payable ~~is the North Carolina percentage of the credit.~~

~~If the decedent was a resident of this State at death, the North Carolina percentage is the net value of the estate that does not have a tax situs in another state, divided by the net value of all property in the estate. If the decedent was not a resident of this State at death, the North Carolina percentage is the net value of real property that is located in North Carolina plus the net value of any personal property that has a tax situs in North Carolina, divided by the net value of all property in the estate, unless the decedent's~~

~~state of residence uses a different formula to determine that state's percentage. In that circumstance, the North Carolina percentage is the amount determined by the formula used by the decedent's state of residence.~~

~~The net value of property that is located in or has a tax situs in this State is its gross value reduced by any debt secured by that property. The net value of all the property in the estate is its gross value reduced by any debts and deductions of the estate.~~depends on whether the decedent was a resident of this State at death. If the decedent was a resident of this State at death, the amount of tax due under this section is reduced by the lesser of the amount of the death tax paid the other state or an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of the estate that has a tax situs in another state and the denominator of which is the value of the decedent's gross estate. If the decedent was not a resident of this State at death, the amount of tax due under this section is an amount computed by multiplying the credit by a fraction, the numerator of which is the gross value of real property that is located in North Carolina plus the gross value of any personal property that has a tax situs in North Carolina and the denominator of which is the value of the decedent's gross estate. For purposes of this section, the gross value of property is its gross value as finally determined in the federal estate tax proceedings."

SECTION 10. Section 9 of this act is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date. The remainder of this act is effective when it becomes law. Section 2 of this act applies to credits for buildings that are awarded a federal credit allocation before January 1, 2003, and for which a federal tax credit is first claimed for a taxable year beginning on or after January 1, 2002.

SENATE BILL 1416:
Housing Tax Credit Changes/Estate Tax Changes

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Kerr
Date:	August 6, 2002	**Summary by:**	Cindy Avrette
Version:	3rd Edition		Committee Counsel

SUMMARY: Senate Bill 1416 does two things:

- ***It modifies the formula for calculating North Carolina estate tax on estates with property in more than one state. (Section 9) This section is effective on and after January 1, 2002, and applies to the estates of decedents dying on or after that date.***
- ***It modifies the low-income housing tax credit in several ways:***
  - ***Section 1 converts the current State tax credit, which is sold to an investor, to a State refundable tax credit that is received directly by the owner and invested directly in the project. At the option of the owner, the credit may be taken as a tax refund or a loan fro the Housing Finance Agency. The revised credit is effective for housing awarded a federal credit allocation on or after January 1, 2003.***
  - ***Section 2 reduces the tax basis required of a purchaser of a credit from 100% to 40% to support the sale of State tax credits allocated in 2001 and 2002.***
  - ***Sections 3 through 8 make changes necessary to conform other tax statutes to the changes made in Sections 1 and 2.***

LOW-INCOME HOUSING TAX CREDIT: Congress enacted the Low Income Housing Tax Credit in 1986 to fund housing for low- and moderate-income households. Each state receives a limited amount of credit each year. The IRS allocates the per capita low-income housing tax credit to state housing agencies, such as the North Carolina Housing Financing Agency, who in turn allocate the credit to project developers who agree to lower project rents for low-income tenants. In 1999, North Carolina authorized a State income tax credit equal to a percentage of the developer's federal tax credit for low income housing constructed in North Carolina. A project developer sells the tax credits to receive funds to finance the project. Developers indicate that the State tax credit sells for no more than 45 cents on the dollar.

There are several concerns with the current low-income housing tax credit:

- The sale of a dollar tax credit for less than 45 cents is an inefficient use of State tax expenditures.
- The process of selling the tax credits is complex. It involves finding investors, negotiating prices, and completing legal documents.
- The pool of investors interested in purchasing the credit is limited and is diminishing.

The bill addresses these concerns in two ways:

- To address the short-term problem of utilizing the current tax credits allocated to developers, the bill reduces the tax basis required of a purchaser from 100% to 40%.
- To address the long-term problem of the complexity and inefficiency of the credit, the bill converts the State credit, which is sold to investors, to a refundable credit, received directly by the owner and invested directly in the project.

Credit for low-income housing awarded a federal credit allocation on or after January 1, 2003: A taxpayer who is allocated a federal low-income housing tax credit is allowed a credit equal to a percentage of the development's eligible basis. Unlike the current credit that must be taken over five years, the proposed credit would be taken in one year. The current State credit is a percentage of the federal credit and the percentage varies depending on the tier designation of the county. The proposed credit would be a percentage of basis for which a State credit is allowed and the percentage would vary depending on the type of development. The eligibility of a development is based upon two factors:

- Income designation of the county or city in which it is located. – The designation of a county or city as "low income", "moderate income", or "high income" is made by the HFA in accordance with the Qualified Allocation Plan in effect as of the time the federal credit is allocated. The Qualified Allocation Plan is adopted annually. The Governor must approve it after a public hearing and publication in the North Carolina Register. A change in the income designation does not affect the developer's eligible basis for which a credit is allowed.
- Affordability requirements. – The affordability requirements are set in the statute and apply for the duration of the federal tax credit compliance period. If in any year a taxpayer fails to meet these affordability requirements, the credit is forfeited.

The chart below sets out the percentage of the developer's eligible basis for which a credit is allowed:

Type of Development	**Percentage of Basis for which Credit is Allowed**
• Units are in a Low Income county or city • 40% of the qualified residential units are affordable to households whose income is 50% or less of area median income	30%
• Units are in a Moderate Income county or city • 50% of the qualified residential units are affordable to households whose income is 50% or less of the area median income	20%
• Units are in a High Income county or city • 50% of the qualified residential units are affordable to households whose income is 40% or less of the area median income	10%
• Units are in a High Income county or city • 25% of the qualified residential units are affordable to households whose income is 30% or less of the area median income	10%

Credit Election: A taxpayer entitled to a State low-income housing tax credit may elect to receive the credit in the form of either a direct tax refund or a loan generated by transferring the credit to the HFA. Neither a direct tax refund nor a loan received as a result of the transfer of the credit is considered taxable income by the State. The IRS would consider a direct tax refund taxable. A letter ruling will be submitted to the IRS to clarify whether the loan proceeds would be taxable. The initial indication is that the proceeds would not be taxable.

If a taxpayer chooses the loan method for receiving the credit, the Secretary must transfer to the HFA the amount of credit allowed the taxpayer. The HFA must loan the amount of the credit to the taxpayer on terms consistent with the Qualified Allocation Plan. The HFA is not required to make the loan until the Secretary transfers the credit amount to it.

If a taxpayer chooses the direct tax refund method for receiving the credit, the Secretary must transfer to the HFA the refundable excess of the credit allowed the taxpayer. The HFA holds the refund in escrow, with no interest accruing to the taxpayer during the escrow period. The HFA must release the refund to the taxpayer upon the occurrence of the earlier of the following:

- The HFA determines that the taxpayer has complied with the Qualified Allocation Plan and has completed at least 50% of the activities included in the development's eligible basis.
- Within 30 days after the development's placed in service date.

Forfeiture: If a taxpayer fails to meet the State's affordability requirements for the duration of the federal tax credit compliance period, the State credit is forfeited. If the taxpayer is required to recapture all or part of the federal credit with respect to a qualified North Carolina low-income development, the State credit is also forfeited. A taxpayer that forfeits all or part of the State credit is liable for all past taxes avoided and any refund claimed as a result of the credit plus interest. This amount is payable 30 days after the date the credit is forfeited. The interest rate is computed for the date the Secretary transferred the credit amount to the HFA.

A taxpayer that is required to recapture all or part of the federal credit with respect to a qualified North Carolina low-income development does not forfeit the corresponding State credit amount in the following circumstances:

- The recapture is the result of an event that occurs in the sixth or subsequent calendar year after the calendar year in which the development was awarded a federal credit allocation.
- The taxpayer elected to transfer the State credit amount to the HFA and received a loan form the HFA for that amount.

Report: The Department of Revenue must report to the Revenue Laws Study Committee and the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- The number of taxpayers that claimed the low-income housing credit.
- The location of each qualified North Carolina low-income building or housing development for which a credit was claimed.
- The total cost to the General Fund of the credits claimed.

Sunset: Like the Current low-income housing tax credit, this credit is repealed effective January 1, 2006.

CREDIT FOR LOW-INCOME HOUSING AWARDED A FEDERAL CREDIT ALLOCATION BEFORE JANUARY 1, 2003:

Often the investment group financing the low-income housing projects is a pass-through entity. Last session, the General Assembly provided that the low-income hosing credit could be allocated among any of the entity's owners, in the entity's discretion, as long as the amount of credit allocated did not exceed the owner's adjusted basis in the pass-through entity. This tax basis requirement means the investor must invest $1 into the project for each $1 of the State credit received. However, the market rate for the credit is about 45 cents for each $1 of State credit. The pool of investors willing and able to meet the tax basis

requirement is smaller that the current need for investment. Without a change in the tax basis requirement, many developers with projects underway may lose money on those projects. To encourage more investment immediately, Section 2 of the bill reduces the tax basis required of a purchaser from 100% to 40%.

Section 2 also addresses the issue of forfeiture by providing that the taxpayer does not forfeit the State credit if a recapture of the federal credit occurs after the State five-year credit period has expired. The federal credit is taken over a 10-year period.

ESTATE TAX CHANGES:

Section 9 incorporates a proposal from the Estate Tax Section of the North Carolina Bar Association.[1] It changes the calculation of estate tax due when property is located in more than one state from a net value calculation to a gross value calculation. North Carolina is in a minority of three states, including North Carolina, that prorate based on a net value of federal taxable estate basis. At least 36 states prorate based on gross values, including the neighboring states of South Carolina and Virginia.

For estates with property only in North Carolina, the North Carolina estate tax equals the credit for state death taxes allowed on the federal estate tax return.[2] If the estate has property in more than one state, the federal credit must be prorated between North Carolina and the other states in which the estate has property. Under current law, the percentage of the federal credit allocated to North Carolina is determined by dividing the net value of the property in North Carolina by the total net value of the property in the estate.

Net value equals the gross value of the property less any debts associated with the property, such as a mortgage. The current law is attempting to allocate the credit based on the value of the property that was includible in the taxable estate for federal purposes. The federal estate tax is calculated on the taxable estate, which is the gross estate less allowable deductions such as debts.

The Estate Tax Section of the North Carolina Bar Association believes a state's share of federal estate tax is more appropriately based on the gross property located in a state whether or not the property generates any federal estate tax. It proposes that this is fair because each state has a responsibility for protecting and supervising the distribution of property regardless of whether it generates federal tax. Also, the use of a net value calculation sometimes results in a North Carolina resident paying more tax than 100% of the amount of the credit.[3] In other instances it may result in a loss of revenue to North Carolina[4]; this may be particularly true in estates in which property qualifies for the marital deduction.

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[1] Rep. Haire introduced a bill on this issue last year, House Bill 276.

[2] The credit for state death taxes allowed on the federal estate tax return is being phased out over the next 4 years. Both the House and the Senate version of SB 1292 do not conform to the phase-out of this credit for 2002 and 2003.

[3] A Charlotte resident has a gross estate worth $10,000,000, including a $2,000,000 home in South Carolina with a $1,000,000 mortgage. The South Carolina portion of the credit is 20% because South Carolina uses a net value calculation: 2,000,000 divided by 10,000,000. The North Carolina portion of the credit is 88%: 8,000,000 divided by 9,000,000.

[4] A Charlotte resident has a gross estate worth $10,000,000, including a $2,000,000 home in South Carolina. The North Carolina property has a $1,000,000 mortgage. The South Carolina portion of the credit continues to be 20%. However, the North Carolina portion of the credit is reduced to 77%.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1416 (Second Edition)

SHORT TITLE: Housing Tax Credit Changes/Estate Tax Changes

SPONSOR(S): Senators Kerr and Hoyle

FISCAL IMPACT

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

($million)

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
Revised Housing Credit			(8.0)	(9.8)	2.9
Housing Credit Clarified		No estimate available			
Multi-state Estate Tax		No estimate available			
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; North Carolina Housing Finance Agency

EFFECTIVE DATE: Section 1 (proposed credit) is effective on or after January 1, 2003, and is repealed effective January 1, 2006. Section 2 (current credit) applies to buildings that are allocated a federal credit before January 1, 2003, and for which a federal credit is first claimed for a taxable year beginning on or after January 1, 2002. Section 9 is effective on or after January 1, 2002, and applies to the estates of decedents dying on or after that date. The remainder of the bill is effective when it becomes law.

BILL SUMMARY:

Section 1 of the proposed bill changes the state low-income housing tax credit program from one based on economic tiers established by the Department of Commerce to one based on household income and housing affordability established by the North Carolina Housing Finance Agency (HFA). The bill replaces the current credit that is based on a percentage of the federal tax credits with a credit based on a percentage of the project's basis. Briefly stated, the credit will be 30% of basis in low-income counties, 20% in moderate-income counties, and 10% in high-income counties. The proposed bill removes the credit's mandatory five-year carry forward period and makes the tax credit refundable in one year. The bill gives a developer the choice of a taking a direct tax refund (if credit exceeds tax owed) or a loan from the HFA. It allows the HFA to receive a housing developer's state tax credit from the Department of Revenue and use the

proceeds to issue a 30-year loan back to the developer. Section 1 applies to tax years beginning in 2003.

Section 2 of the bill removes the basis requirement for credit allocations approved in SB 181 in 2001. The 2001 General Assembly allowed a pass-through entity to allocate the state credit among any of its owners, as long as the amount of credit allocated did not exceed the owner's adjusted basis in the pass-through entity.

Section 9 modifies the formula for calculating North Carolina estate tax on estates with property in more than one state. Other bill sections deal with technical changes in the low-income housing credit act and with the sharing of Department of Revenue information on housing credits with the Housing Finance Agency.

BACKGROUND:
In the Tax Reform Act of 1986, Congress created the Low-Income Housing Tax Credit (LIHTC) program to fund housing for low and moderate-income households. In 2002, each state receives a tax credit of $1.75 per person that can be used for new construction or rehabilitation of housing. North Carolina has an allocation of $14,086,298 based on a 2000 Census population of 8,049,313. This per capita credit amount is indexed to the CPI beginning in 2003.

The federal credit has helped finance the construction of 21,423 low-income housing units in the state from 1987 to 1999. Federal data in the chart below shows that the more urban areas of the state have benefited most from the federal credit.

	Low-income Units Constructed	%
Tier I	1,799	8.4%
Tier II	1,921	9.0%
Tier III	2,311	10.8%
Tier IV	2,697	12.6%
Tier V	12,650	59.0%
Unidentified	45	0.2%
	21,423	100.0%

North Carolina is one of 12 states that offer a companion state low-income housing credit. North Carolina General Statutes 105-129.16B authorizes a state income tax credit equal to a percentage of a taxpayer's federal tax credit for low-income housing constructed in the state. The credit is 75% of the federal credit for buildings located in Tier 1 and Tier 2 counties and for housing located in 26 eastern counties affected by Hurricane Floyd. The credit is 25% of the federal credit for buildings in Tiers 3, 4, and 5. Tiers 3 through 5 also must comply with the following restrictions:

1) Must be located in a Tier 3 or 4 enterprise area and have at least 40% of its residential units rent restricted and occupied by individuals whose income is 50% or less of median gross income, or
2) Must be located in a Tier 5 enterprise area and have at least 40% of its residential units rent restricted and occupied by individuals whose income is 35% or less of median gross income.

The credit is taken over five years beginning when the federal credit is first claimed for the building. The federal credit requires that the low-income housing be used for that purpose for at least 30 years.

ASSUMPTIONS AND METHODOLOGY:

SECTION 1

In tax years 2000 and 2001, the first two years of the state low-income housing credit, there were 66 projects that received both federal and state tax credits. These 66 projects were awarded $17,880,160 in federal tax credits by the North Carolina Housing Finance Agency (HFA), the credit administrator. Since the federal credit amount is taken each year for ten years, the total federal credit is worth $178,801,600 to the project investors. The North Carolina credit is a percentage of this ten-year total. The mix of 25% and 75% state credits for this two-year allocation period equal an average tax credit of 45% of the $178.8 million federal credit. If investors use 100% of the state credits allocated in 2000 and 2001, the General Fund will expend $80.5 million for credits to low-income housing investors. Since many of these projects are still underway and the credits cannot be used until project completion, there is no data on the actual use of the state credits.

To understand the fiscal impact of the proposed state credit in Section 1 of the bill, the same 66 projects from 2000 and 2001 are used. The HFA provided the General Assembly's Fiscal Research Division with a list of counties they divided into low, moderate, and high income levels. In most cases, the proposed county income structure follows the current tiers: Tier 1 is low-income, Tier 2 is low and moderate income, Tiers 3 and 4 are mostly moderate income, and Tier 5 is high income. The proposed 10% (high), 20% (moderate) and 30% (low) state credits are applied to the basis of the 2000 and 2001 projects. Since the federal credit allocation is equal to 8.6% of the project basis, the basis is determined by dividing the annual federal credit by 8.6%. For example, Maplewood Apartments in Sparta received a federal tax credit allocation of $68,214. This credit divided by 8.6% equals a property basis of $793,186. Since Alleghany is a low-income county, this project would qualify for a 30% credit under the proposed bill and receive a state credit or loan equal to $237,955. (($68,214/. 086)*.3) When all 2000 and 2001 projects are computed using the proposed state credits, the average credit amount for the 66 projects is 20.2%.

The chart below shows a savings to the General Fund over the life of the 2000 and 2001 state credits. Under the current state program, the 2000 and 2001 credits will produce a General Fund loss of $80.5 million over the five to seven years the credits will be used. If the proposed credit was in effect, the General Fund loss would be $36.5 million. In other words, the General Fund would save $44 million under SB 1416 versus the current tax credit.

# of Projects	2002 Tiers	Current State Credit	Proposed State Credit	Savings to GF	Equity to Developers	Benefit to Developers
12	1	$14,422,566	$6,708,170	$7,714,396	$5,769,026	$939,144
15	2	$15,758,674	$7,737,897	$8,020,777	$6,303,470	$1,434,428
11	3	$13,224,492	$6,959,506	$6,264,985	$5,289,797	$1,669,710
12	4	$12,451,138	$6,023,119	$6,428,020	$4,980,455	$1,042,663
16	5	$24,673,814	$9,091,551	$15,582,263	$9,869,526	($777,975)
66		$80,530,684	$36,520,244	$44,010,440	$32,212,274	$4,307,970

While the proposed credit saves General Fund revenue, it is intended to increase funding to housing projects. Most tax credits are sold to investment companies at a discounted price in order to receive the funds immediately instead of five years for the state credits or 10 years for the federal credits. In the equity to developers' column in the chart above, HFA assumes that developers receive 40 cents for every $1 of credit they sell. For the 66 projects in 2000 and 2001, it is estimated that the developers sold their $80.5 million in state credits for $32.2 million. Since the proposed credit is refundable or can be taken as a loan, the 2000 and 2001 credits would have been worth $36.5 million. Compared to the current credit program, the developers would have received an additional $4.3 million to put into their projects. However, 15 of the 66 projects would have received less under the proposed credit than they did selling their current credits.

Section 1 of the bill applies only to tax years 2003 through 2005. The bill does not change the sunset of the credit in 2006. For tax years 2003 through 2005, the proposed tax credit will produce a long term General Fund savings, but will have a short-term loss on a fiscal year basis. The federal credit allocation for 2003 to 2005 is based on the 2002 per capita allocation, but adjusted annually by the CPI. The chart below uses CPI estimates from Economy.com and a population estimate for North Carolina from the 2000 US Census. Based on these assumptions, North Carolina is projected to receive the following federal credit allocations:

	Per capita	CPI	Population	Federal Credit
2002	$1.75		8,049,313	$14,086,298
2003	$1.79	2.0%	8,049,313	$14,368,024
2004	$1.82	2.2%	8,049,313	$14,684,120
2005	$1.87	2.5%	8,049,313	$15,051,223

In the chart below, the annual federal allocation is multiplied by 10 to get the full federal credit amount. The chart assumes the mix of 25% and 75% state credits in 2003 through 2005 will average 45% as it did in 2000 and 2001. From 1987 to 1999, the average construction time for low-income housing financed with federal tax credits ranged from one year for projects with less than 50 units to two years with projects with 100 to 200 units. Based on this experience, the chart for the current and the proposed credits assumes that half of the projects will be completed one year after the credit is allocated and half will be completed two years after the credit allocation. For example, the $64.7 million in 2003 state credits taken over a five-year period will equal approximately $12.9 million per year. If half of the 2003 credits are taken one year after allocation, then $6.5 million in state credits will be redeemed in FY 2004-05. In FY 2005-06, the remaining $6.5 million in state credits will begin their five-year payout. The 2003 credit allocation will not be completely used up until FY 2009-10. This chart assumes 100% utilization of the credits.

CURRENT CREDIT PROGRAM

Allocation	Federal Credit	State Credit			($Million)	
Year	X 10 years	45%	2004-05	2005-06	2006-07	2007-08
2003	$143.7	$64.7	$6.5	$12.9	$12.9	$12.9
2004	$146.8	$66.1		$6.6	$13.2	$13.2
2005	$150.5	$67.7			$6.8	$13.5
TOTAL		**$198.5**	**$6.5**	**$19.5**	**$32.9**	**$39.7**

For the proposed program, it is assumed the mix of 10%, 20%, and 30% credits will average 20.2% as it did when applied to 2000 and 2001 credit allocations. This percentage is multiplied against the 10-year federal credit amount. In 2003, the state credit allocation in the proposed program is $29 million. The total credit amount can be taken in the year the project is completed. As in the current credit program, it is assumed that half of the projects will be completed in one year and half in two years, thus the $29 million is divided between FY 2004-05 and FY 2005-06.

PROPOSED CREDIT PROGRAM

Allocation	Federal Credit	State Credit			($Million)	
Year	X 10 years	20.2%	2004-05	2005-06	2006-07	2007-08
2003	$143.7	$29.0	$14.5	$14.5		
2004	$146.8	$29.7		$14.8	$14.8	
2005	$150.5	$30.4			$15.2	$15.2
TOTAL		**$89.1**	**$14.5**	**$29.3**	**$30.0**	**$15.2**

DIFFERENCE			($Million)		
Current Credit	**$198.5**	**$6.5**	**$19.5**	**$32.9**	**$39.7**
Proposed Credit	**$89.1**	**$14.5**	**$29.3**	**$30.0**	**$15.2**
	$109.4	($8.0)	($9.8)	$2.9	$24.5

The proposed state credit will save the state General Fund $109.4 million over the remainder of the low-income housing tax credit program. However, the chart illustrates a short-term revenue loss due to the timing of the projects. Again, assuming the $198.5 million will be sold for 40% of their value or $79.4 million, the proposed credit program will increase equity funding in housing projects by $9.7 million ($89.1 million in proposed credits - $79.4 million sale of current credits). The proposed tax credit/loan program will eliminate low-income housing tax credits as an investment option for financial institutions, insurance companies, and other interested parties.

SECTION 2

Section 2 is meant to clarify an action taken in the 2001 General Assembly (SB 181, Chapter 431). The housing industry lobbied to allow the bifurcation of the state and federal housing tax credits. Bifurcation simply means that one investor can buy and receive the allocation of the federal credit for a project and another investor can buy and receive the allocation for the state credit for the same project. Allowing bifurcation was supposed to increase the pool of investors for the state credit, but the housing industry says the law is too strict. The language in SB 181 required a pass-through entity to allocate the credit among any of the entity's owners, as long as the amount of credit allocated does not exceed the owner's adjusted basis in the pass-through entity. For example, payment of 40 cents for a $1 tax credit only gave the investor 40 cents of credit if that was the investor's only investment in a project. Section 2 will give a $1 credit to the investor who pays at least 40 cents for the credit.

Since there is no information available from the Department of Revenue on the utilization of low-income housing credits, it is not possible to determine the true fiscal impact from this text change. However, because all previous notes on this tax program have assumed full use of the credit, the full cost of this credit has been factored into General Fund revenue projections. This change will insure the expanded pool of credit investors that was intended by SB 181.

SECTION 9

Research by the North Carolina State Bar Association found that North Carolina is one of only three states that prorate estate tax on multi-state property based on net value versus the more common practice of pro-ration based on gross value. The Department of Revenue has been asked to sample multistate estate tax returns to judge the fiscal impact of this proposal. Since this sample has not yet been provided to Fiscal Research, no estimate is available for Section 9.

SOURCES OF DATA: NC Housing Finance Agency

TECHNICAL CONSIDERATIONS:

Proposed GS 105-129.42(c) allows the Housing Finance Agency to designate high, moderate, and low-income counties and cities each year by publishing a list in the North Carolina Register as part of the Qualified Allocation Plan. The proposed law does not specify what state or federal standard should be used in making this designation. Counties qualify for the current low-income housing tax credit based on their economic tier as defined in the statutes. The General Assembly may want to reduce the agency's discretion in awarding credits by defining what high, moderate, and low-income mean.

Proposed GS 105-129.44 requires the Department of Revenue to report to the Revenue Laws Study Committee by May 1 each year on the status of the credit program. Since the bill places most of the credit administration with the Housing Finance Agency, it would seem more appropriate for this agency to do the annual report.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson

DATE: July 24, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☒ Committee Substitute for
S.B. 1407 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A CONTRACT RIGHT REGARDING THE TIMING OF PAYMENTS UNDER CONTRACTS REQUIRING REIMBURSEMENT OF FEDERAL FUEL EXCISE TAXES AND TO MAKE VARIOUS MOTOR FUEL EXCISE TAX CHANGES.

☒ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 1407

Finance Committee Substitute Adopted 7/24/02

Short Title: Contracts to Reimburse Fuel Tax/Fuel Tax Chg. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A CONTRACT RIGHT REGARDING THE TIMING OF PAYMENTS UNDER CONTRACTS REQUIRING REIMBURSEMENT OF FEDERAL FUEL EXCISE TAXES AND TO MAKE VARIOUS MOTOR FUEL EXCISE TAX CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 119 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Contract Rights Regarding Tax Reimbursement.

"**§ 119-65. Timing of reimbursement payments under contract.**

(a) Right. – When a contract calls for one party to reimburse a second party for the federal manufacturer's excise taxes levied on petroleum products in Part III of Subchapter A of Chapter 32 of the Internal Revenue Code, whether as a separate item or as part of the price, the party making the reimbursement has the right to choose to tender payment for the taxes no more than one business day before the day the second party is required to remit the taxes to the federal Internal Revenue Service. The party making the reimbursement has the option of exercising this right. Exercise of this right does not relieve the party of the obligation to make the reimbursement as provided for in the contract, but affects only the timing of when that reimbursement must be tendered.

(b) Procedure. – In order to exercise the contractual right established in subsection (a) of this section, the party making the reimbursement must notify the second party in writing of the intent to exercise the payment option and the effective date of the exercise. The effective date must be no earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later.

(c) Security. – If the party making the reimbursement exercises the contractual right provided in this section, the second party may require security for the payment of the taxes in proportion to the amount the taxes represent compared to the security

required on the contract as a whole. The second party may not, however, change the other payment terms of the contract without a valid business reason other than the exercise of the contractual right, except to require the payment of the taxes under the contractual right to be made by electronic funds transfer."

SECTION 2. G.S. 105-449.41 is repealed.

SECTION 3. G.S. 105-449.47 is amended by adding a new subsection to read:

"**§ 105-449.47. Registration of vehicles.**

(a) Requirement. – A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

(a1) Registration and Identification Marker. – When the Secretary registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. A motor carrier must keep records of identification markers issued to it and must be able to account for all identification markers it receives from the Secretary. Registrations and identification markers issued by the Secretary are for a calendar year. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article, former Article 36 or 36A of this Subchapter, or Article 36C or 36D of this Subchapter.

A motor carrier must carry a copy of its registration in each motor vehicle operated by the motor carrier when the vehicle is in this State. A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the authority that issued it.

(b) Exemption. – This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

SECTION 4. G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. ~~Penalty for operating a motor vehicle without a registration card or an identification marker.~~Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the following is subject to a civil penalty:

(1) ~~operates~~ Operates in this State or causes to be operated in this State a motor vehicle that does not carry the registration card required by this Article or does not display an identification marker in accordance with

this ~~Article is subject to a civil penalty of one hundred dollars ($100.00).~~ Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for identification markers the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each identification marker the carrier is unable to account for.

(3) Displays an identification marker on a motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each identification marker unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the identification marker and the motor carrier displaying the unlawfully obtained identification marker are jointly and severally liable for the penalty under this subdivision.

~~The~~ A penalty imposed under this section is payable to the Department of Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification ~~marker,~~ marker or with an identification marker the Secretary did not issue for the vehicle, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. – The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section."

SECTION 5. G.S. 105-449.60(1) is recodified as G.S. 105-449.60(1e).

SECTION 6. G.S. 105-449.60 reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

"(1) Biodiesel. – Any fuel or mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats.

(1a) Biodiesel provider. – A person who does any of the following:

a. Produces an average of no more than 500,000 gallons of biodiesel per month during a calendar year. A person who produces more than this amount is a refiner.

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

...

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

...

(12) Fuel alcohol. ~~Methanol~~ Alcohol, methanol, or fuel grade ethanol.

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

a. Produces an average of no more than 500,000 gallons of fuel ~~alcohol.~~alcohol per month during a calendar year. A person who produces more than this amount is a refiner.

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

...

(15) Gasoline. – Any of the following:

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

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

c. Gasohol.

d. Fuel ~~grade ethanol.~~alcohol.

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

...

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

...

(27a) Refiner. – A person who owns, operates, or controls a refinery. The term includes a person who produces an average of more than 500,000 gallons of fuel alcohol or biodiesel a month during a calendar year.

(27b) Refinery. – A facility used to process crude oil, unfinished oils, natural gas liquids, or other hydrocarbons into motor fuel and from which fuel may be removed by pipeline or vessel or at a rack. The term does not include a facility that produces only blended fuel or gasohol.

...

(31) Supplier. – Any of the following:

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

b. A fuel alcohol provider.

c. A biodiesel provider.

d. A refiner.

...

(33) Tank wagon. – A truck that is not a transport truck ~~and has multiple compartments~~ and has a compartment designed or used to carry at least 1,000 gallons of motor fuel."

SECTION 7. G.S. 105-449.72(a)(2) reads as rewritten:

"(a) Initial Bond. – An applicant for a license as a refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

...

(2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars ($2,000) and may not be more than two hundred fifty thousand dollars ($250,000):

a. A supplier that is a fuel alcohol provider or a biodiesel provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.

b. An occasional importer.

c. A tank wagon importer.

d. A distributor.

e. Repealed by Session Laws 1997-60, s. 5."

SECTION 8. G.S. 105-449.72(d) reads as rewritten:

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

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

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

SECTION 9. G.S. 105-449.77 reads as rewritten:

"**§ 105-449.77. Records and lists of license applicants and license holders.**

(a) Records. – The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(b) ~~Supplier~~ Lists. – The Secretary must annually give a list to each license holder of all the license holders under this Article. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed refiner or licensed supplier and to any other license holder that requests a copy of the list. ~~of licensed suppliers, licensed terminal~~

~~operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed supplier.~~

~~The Secretary must give a list of licensed suppliers to each licensed distributor, licensed exporter, and licensed importer. The Secretary must also give a list of licensed suppliers to each unlicensed distributor that asks for a copy of the list. The list must state the name, account number, and business address of each supplier on the list and must indicate whether the supplier is an elective supplier, a permissive supplier, or an in-State only supplier. The Secretary must send an annual update of the list to each licensed distributor, licensed exporter, and licensed importer, and to each unlicensed distributor that requested a copy of the list.~~

~~(c) Transporter Lists. — The Secretary must give a list of licensed motor fuel transporters to each licensed supplier, licensed terminal operator, licensed importer, licensed blender, licensed distributor, and licensed exporter. The list must state the name, account number, and business address of each motor fuel transporter on the list. The Secretary must send a monthly update of the list to each license holder to whom the Secretary must give the list.~~

~~The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed blenders, licensed distributors, and licensed exporters to each licensed motor fuel transporter. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed motor fuel transporter.~~"

SECTION 10. G.S. 105-449.87 reads as rewritten:

"**§ 105-449.87. Backup tax and liability for the tax.**

(a) Tax. – An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. ~~The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment.~~

(2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.

(3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.

(4) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 19.

(5) Motor fuel that, based on its shipping document, is destined for delivery to another state and is then diverted and delivered in this State.

(b) General Liability. – The operator of a highway vehicle that uses motor fuel that is taxable under subdivisions (a)(1) through (a)(3) of this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel

taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that is taxable under this section, the end seller is jointly and severally liable for the tax. If the Secretary determines that a bulk-end user or retailer used or sold untaxed dyed diesel fuel to operate a highway vehicle when the fuel is dispensed from a storage facility or through a meter marked for nonhighway use, all fuel delivered into that storage facility is presumed to have been used to operate a highway vehicle. An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123.

(c) ~~Imputed Knowledge.~~ Diverted Fuel. – ~~An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section if the end seller delivered the fuel into a storage facility that was not marked as required by G.S. 105-449.123.~~ The person who authorizes a change in the destination state of motor fuel from the state given on the fuel's shipping document to North Carolina is liable for the tax due on the motor fuel. If motor fuel is diverted from North Carolina to another state, only the person who authorized the fuel to be diverted is eligible for a refund of the amount of tax paid on the fuel."

SECTION 11. G.S. 105-449.88 is amended by adding a new subdivision to read:

"(8) Motor fuel sold to a county or a municipal corporation for its use."

SECTION 12. G.S. 105-449.101(a) reads as rewritten:

"(a) Requirement. – A ~~person that transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State~~ motor fuel transporter that imports motor fuel into this State or exports motor fuel from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter."

SECTION 13. G.S. 105-449.106(a) reads as rewritten:

"(a) ~~Government and~~ Nonprofits. – A ~~local governmental entity or a~~ nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon.

An application for a refund allowed under this subsection must be made in accordance with this Part and must be signed by the chief executive officer of the ~~entity.~~ organization. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

Any of the following entities may receive a refund under this subsection:

~~(1) A county or a municipal corporation.~~

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
(3) A volunteer fire department.
(4) A volunteer rescue squad.
(5) A sheltered workshop recognized by the Department of Health and Human Services."

SECTION 14. G.S. 105-449.114(c) reads as rewritten:

"(c) Notwithstanding any other provision of law concerning refunds of motor fuels and ~~special~~ alternative fuels taxes, the Department of Revenue may enter into a memorandum of understanding or an agreement with the Eastern Band of Cherokee Indians to make refunds of motor fuels and ~~special~~ alternative fuels taxes to the Tribe in its collective capacity on behalf of its members who reside on or engage in otherwise taxable transactions within Cherokee trust lands. The memorandum or agreement shall be approved by the Council and signed by the Chief on behalf of the Tribe and shall be signed by the Secretary of Revenue on behalf of Department of Revenue. The memorandum or agreement may not affect the right of an individual member of the Tribe to a refund and shall provide for deduction of amounts refunded to individual members of the Tribe from the amounts to be refunded to the Tribe on behalf of all members. The memorandum or agreement may be effective for a definite or indefinite period, as specified in the agreement."

SECTION 15. G.S. 105-449.115(f) reads as rewritten:

"(f) Sanctions Against Transporter. – The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

(1) Transporting motor fuel in a railroad tank care or transport truck without a shipping document ~~or with a false or an~~ incomplete shipping document.
(2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty ~~depends on whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is one thousand five hundred dollars ($1,500). For a second or subsequent assessment under this subsection, the penalty is seven thousand five hundred dollars ($7,500).~~ is five thousand dollars ($5,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 16. Part 6 of Article 36C of Chapter 105 of the General Statutes is amended by adding new section to read:

"**§ 105-449.115A. Shipping document required to transport fuel by tank wagon.**

(a) Issuance. – A person may not transport motor fuel by tank wagon unless that person has an invoice, bill of sale, or shipping document containing the following information and any other information required by the Secretary:

(1) The name and address of the person from whom the motor fuel was received.

(2) The date the fuel was loaded.

(3) The type of fuel.

(4) The gross number of gallons loaded.

(b) Duties of Transporter. – A person to whom an invoice, bill of sale, or shipping document was issued must do all of the following:

(1) Carry the invoice, bill of sale, or shipping document in the conveyance for which it is issued when transporting the motor fuel described in it.

(2) Show the invoice, bill of sale, or shipping document upon request when transporting the motor fuel described in it.

(c) Sanctions. – Transporting motor fuel in a tank wagon without an invoice, bill of sale, or shipping document containing the information required by this section is grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. The penalty imposed under this subsection is payable by the person in whose name the tank wagon is registered. The amount of the penalty is one thousand dollars ($1,000). A penalty imposed under this subsection is in addition to any motor fuel tax assessed."

SECTION 17. G.S. 105-449.118 reads as rewritten:

"**§ 105-449.118. Civil penalty for buying or selling non-tax-paid motor fuel.**

A person who dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a highway vehicle is subject to a civil ~~penalty.~~penalty of two hundred fifty dollars ($250.00) per occurrence. ~~The penalty is based on the amount of motor fuel dispensed and is set at the following amounts:~~

~~Number of Gallons Dispensed:~~	~~Penalty~~
~~Less than 25~~	~~$ 75.00~~
~~At least 25 but less than 50~~	~~150.00~~
~~At least 50~~	~~300.00.~~

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed."

SECTION 18.(a) Section 1 of this act becomes effective September 1, 2002, and applies to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and have no expiration date. Section 1 of this act does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. Section 1 of this act does not impair the obligation arising under any contract executed before September 1, 2002.

SECTION 18.(b) The remainder of this act becomes effective January 1, 2003.

SENATE BILL 1407:
Contract to reimburse fuel tax/ Fuel tax chgs.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Kerr
Date:	August 5, 2002	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

SUMMARY: Section 1 of Senate bill 1407 would allow local petroleum distribution companies to retain the float on the federal motor fuel excise tax monies until they are due for payment. This provision would become effective September 1, 2002. The remainder of the bill would make several technical, administrative, and substantive changes to the motor fuel tax laws, effective January 1, 2003.

CURRENT LAW AND BILL ANALYSIS:

Contract Rights Regarding Tax Reimbursements: Section 1

The State and federal motor fuel excise taxes are payable by the distributor, but collected and remitted to the respective tax collection agencies by the supplier. G.S. 105-449.91 gives the licensed distributor the right to defer the remittance of any state tax to the supplier until the date the supplier, as trustee, must pay the tax to this State or to another state. This allows the distributor to retain the interest on the state tax monies until they are due for payment. Federal law does not address the distributor's right to defer the remittance of any federal tax due. The distributor's right as to the timing of the remittance of the federal tax due to the supplier is subject to the terms of the contract between the distributor and the supplier.

Section 1 would provide that a contract subject to North Carolina law must afford the distributor the same election for the timing of federal tax remittance that the distributor has for state tax remittance. It provides that the distributor may elect to remit the federal tax due to the supplier one day before the tax is due to the federal Internal Revenue Service. This election is optional. To exercise this right, the distributor must notify the supplier in writing of the intent to exercise this election and the effective date of the election. The effective date cannot be earlier than the beginning of the next federal tax quarter or 30 days after the notice of intent is received, whichever is later. To secure the receipt of the tax monies, the supplier can require security for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole.

In practice, this change in the law would not affect contracts between suppliers and distributors for branded fuel[1] when the contract names another state as the controlling state law. However, if no particular state's law is designated as controlling in the contract, then this State law would allow the distributor to elect to remit the tax the day before it is due, thus allowing the distributor to receive the benefit of any float associated with the federal tax monies. Likewise, if a supplier offers unbranded fuel[2] at a North Carolina terminal and a distributor lifts from that terminal rack, North Carolina law will control because the contract for the fuel is accepted in North Carolina

[1] Branded fuel is fuel supplied to a distributor pursuant to a contract.

[2] Unbranded fuel is fuel offered by a supplier at the terminal rack to any distributor who wishes to purchase it.

and subject to North Carolina statutes. Currently, Georgia, Alabama, Mississippi, and Tennessee[3] have similar statutes.

This section of the bill becomes effective September 1, 2002, and applies to contracts entered into or renewed on or after that date and to all continuing contracts that are in effect on that date and have no expiration date. It does not apply to a contract in effect on September 1, 2002 that, by its terms, will terminate on a later date; nor does it impair the obligation arising under any contract executed before September 1, 2002.

Motor Fuel Enforcement Tax Changes: Sections 2, 3, 4, 15, 16, and 17

Section 2 repeals the Class 1 misdemeanor for willfully and knowingly making a false statement for the purposes of obtaining or assisting someone else to obtain a credit, refund, or reduction of motor fuel tax liability. By repealing this statute, the general penalties in G.S. 105-236 would apply. It is a Class H felony under G.S. 105-236(7) to attempt to willfully evade a tax and it is a Class H felony under G.S. 105-236(9a) to willfully help someone else evade a tax.

A motor carrier subject to the International Fuel Tax Agreement must register with the carrier's base state and a motor carrier not subject to that Agreement must register with the Secretary of Revenue. It is unlawful for a motor carrier to operate motor vehicles in the State unless the motor carrier is registered. To indicate to enforcement officers that the carrier is properly registered, the vehicles must display identification markers, or decals. *Section 3* requires a motor carrier to keep records of the decals issued to it and to be able to account for those decals.

Section 4 establishes a civil penalty for unaccounted for decals and for decals unlawfully obtained. The penalty for being unable to account for decals is $100 per decal. The penalty for displaying a decal unlawfully obtained is $1,000 per decal. This penalty is jointly and severally liable by both the motor carrier whose vehicles display the decal and the motor carrier who obtained the decals.

Section 15 simplifies the penalty for transporting motor fuel without a shipping document or with a false or an incomplete shipping document and the penalty for delivering motor fuel to a destination state other than the one shown on the shipping document. Currently, the amount of the penalty depends on whether the person against whom the penalty is assessed has previously been assessed a penalty under this statute. If the answer is "no", the amount of the penalty is $1,500. If the answer is "yes", the amount of the penalty is $7,500. To determine whether the person has previously been assessed a penalty under this section requires the enforcement officer to obtain detailed information, which the officer forwards to the Motor Fuels Tax Division so that the Division can check its records and then assess the correct penalty. The penalty is seldom imposed because the enforcement officers cannot enforce the penalty at the time the offense occurs. This section enables the enforcement officer to immediately assess the penalty by providing a flat penalty amount of $5,000.

Section 16 would enable the Motor Fuels Tax Division to be able to track motor fuel transported by a tank wagon after the fuel has left the terminal. A tank wagon is a truck that has a

[3] Tennessee collects federal and state excise tax at the rack like North Carolina.

compartment designed or used to carry at least 1,000 gallons of motor fuel.[4] Under this section, a person could not transport motor fuel by tank wagon unless the person has an invoice, bill of sale, or shipping document that contains the following information: the name and address of the person from whom the motor fuel was received, the date the fuel was loaded, the type of fuel, and the gross number of gallons loaded. The person must carry this documentation when transporting the fuel and show the documentation upon request. These requirements are similar to, but less onerous, than the requirements for motor fuel transported by a railroad tank car or transport truck.[5] A violation of this statute would be grounds for a civil penalty in the amount of $1,000.

Section 17 simplifies the penalty for dispensing, or allowing to be dispensed, non-tax-paid fuel into a highway vehicle. Currently, the amount of the penalty varies depending upon the number of gallons dispensed. However, it is often impossible to know how many gallons have been dispensed. This section simplifies the penalty by providing a fixed penalty amount of $250 per occurrence.

Biodiesel and Fuel Alcohol Tax Law Changes: Section 6

North Carolina's motor fuel laws address fuel alcohol, but they do not address biodiesel. Both types of fuel are special fuels that may be used to operate a motor vehicle. *Section 6* defines biodiesel fuel as a mixture of fuels derived in whole or in part from agricultural products or animal fats or wastes from these products or fats. There is one person in this State who is planning to produce biodiesel fuel using, among other fats, discarded french fry grease from fast food restaurants.

Under current law, a person who produces fuel that can be used to operate a motor vehicle is considered a refiner and is subject to a $2 million bonding requirement. North Carolina has not had a refiner before and so it has not needed to develop the definition of a refiner. However, it is anticipated that a vehicle can be operated with biodiesel fuel alone. It also appears that fuel alcohol may be used to operate a motor vehicle without blending it with gasoline. Under the current law, both a biodiesel provider and a fuel alcohol provider would be considered a refiner and subject to the $2 million bond.

Section 6 defines a biodiesel provider and a fuel alcohol provider as a person who produces an average of no more than 500,000 gallons of biodiesel or fuel alcohol a month during a calendar year. It establishes a definition of "refiner" as a person who produces an average of more than 500,000 gallons of fuel a month, thereby eliminating the small biodiesel and fuel alcohol providers from the large surety bond requirements. Biodiesel providers and fuel alcohol providers are subject to a bonding requirement of no less than $2,000 and no more than $250,000. The amount of the bond is determined by the provider's average expected monthly tax liability.

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[4] Section 6 amends the term "tank wagon" to require that it be used to carry at least 1,000 gallons of motor fuel. This modification exempts trucks carrying less than that amount from the requirements imposed by this Section 16.

[5] Tank wagons would not be required to be registered, to have a tax responsibility statement, to have a machine-printed shipping document, or to have a destination state. Also, the penalty imposed on a tank wagon for failure to have the proper documentation is $1,000 as opposed to $5,000.

Section 6 also adds a biodiesel provider and a refiner to the definition of supplier. *Section 7* adds a biodiesel provider to the list of license holders that must be bonded.

Special Mobile Equipment: Section 10

Special mobile equipment is a vehicle that has a permanently attached crane, mill, ditch-digging apparatus, or similar attachment. The vehicle is driven on the highway only to get to and from a non-highway job. It is not designed or used primarily for the transportation of persons or property. Under current State law, special mobile equipment may use dyed (untaxed) diesel fuel. However, it is not allowed to use dyed diesel under federal law. This contradiction causes confusion and sometimes results in the assessment of federal penalties. *Section 10* conforms North Carolina law to the federal law. Special mobile equipment will continue to be entitled to a quarterly refund of motor fuel tax paid to operate the equipment off-highway.[6]

Diverted Fuel: Section 10:

A person may not transport motor fuel by railroad tank car or by truck unless the person has a shipping document indicating, among other things, the destination state of the motor fuel. The tax on the motor fuel is collected at the rack at the motor fuel tax rate of the state named on the shipping document as the destination state. The person transporting the motor fuel must deliver it to the state printed on the shipping document.

If the fuel is diverted to another state, the person transporting the fuel must notify the Secretary of the diversion and receive a confirmation number authorizing the diversion. The state tax owed on the fuel changes when the fuel is diverted to a different state. Currently, the distributor notifies the supplier of the diversion and the supplier makes the correction based on its business practices. The diversion may be accounted for in several different ways on one of four different motor fuel tax forms. However, the supplier is not the party responsible for paying the tax; the supplier's tax collection obligations ended once the fuel left the terminal.

Section 10 clarifies that North Carolina motor fuel excise tax is due on motor fuel that is diverted to this State. It specifies that the person who authorized the fuel to be diverted to a different state is liable for the tax owed to that state; likewise the person is entitled to a refund of the North Carolina tax paid on the fuel. The diversion corrections must be made on the backup tax form.

Motor Fuel Tax Exemption for Local Governments: Sections 11 and 13

Counties and municipalities are entitled to a quarterly refund of motor fuel excise taxes paid by them during the preceding quarter. The refund is calculated at the rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one-cent per gallon. *Section 11* removes counties and municipalities from the list of entities entitled to a refund and *Section 13* adds them to the list of entities exempted from the motor fuel excise tax. Other entities exempted from the tax include

[6] G.S. 105-449.106(c).

the federal government, the State government, local boards of education, charter schools, and community colleges.

Administrative and Technical Changes: Sections 5, 6, 8, 9, 12, and 14

A refiner, a terminal operator, a supplier, an importer, a blender, a permissive supplier, and a distributor must file a bond with the Secretary to be licensed. The bond is conditioned upon compliance with the motor fuel tax laws. Whenever a license holder changes bonding companies or decides to go out of business, the license holder must notify the Secretary. After determining that all taxes and penalties due under the motor fuel tax laws have been paid, the Secretary must return the previously filed bond and notify both the bonding company and the license holder that the person is released from liability on the bond. The Motor Fuels Tax Division often receives return mail on the correspondence sent to the license holder because the license holders have moved. *Section 8* relieves the Division from the requirement that it notify the license holder; it need only return the previously filed bond and the notice of release from liability to the bondholder.

The Motor Fuels Tax Division must keep a record of all the license holders under Article 36C and it must send this list to all the license holders along with a monthly update. Many license holders have expressed a desire not to receive the list as often as it is received. *Section 9* relieves the Division of the necessity of sending the monthly updates to all license holders. Under this section, the Division must send an annual list to each license holder of all the license holders under Article 36C. Thereafter, the Division need only send a monthly update to each licensed refiner or licensed supplier and to any other license holder that request a copy of the list.

Section 5 renumbers the definitions to allow for the inclusion of the new definitions in *Section 6* in their proper alphabetical place. *Section 6* includes within the definition of "motor fuel transporter" a person who transports motor fuel by pipeline. *Section 12* uses the defined term "motor fuel transporter." *Section 14* replaces the term "special fuels" with the defined term "alternative fuels".

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1407 (Second Edition)

SHORT TITLE: Contracts to Reimburse Fuel Tax

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	*No Impact*				
Highway Fund	*No Estimate Available - See Assumptions and Methodology*				
Highway Trust Fund	*No Estimate Available - See Assumptions and Methodology*				
Local Governments	*See Assumptions and Methodology*				
EXPENDITURES					
Motor Fuels	Slight savings will be realized.				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Revenue Motor Fuels Division; N.C. Department of Transportation – Division of Motor Vehicles; Local Governments

EFFECTIVE DATE: Section 1 of the act is effective September 1, 2002, for contracts entered into or renewed on or after that date, as well as all contracts in effect on that date that have no expiration date and are continuing contracts. Does not apply to a contract in effect on September 1, 2002, that, by its terms, will terminate on a later date. The remainder of the act becomes effective January 1, 2003.

BILL SUMMARY: Section 1 of the legislation establishes a contract right regarding the timing of payments under contracts requiring reimbursement of federal fuel excise taxes. The party making reimbursements will not be required to tender payment for the taxes more than one business day before the day the second party is required to remit the taxes to the IRS. The procedures and security provisions for exercising this right are set out in the bill.

The remaining sections of the bill make technical changes to the motor fuel tax statutes.

ASSUMPTIONS AND METHODOLOGY:

Section 1 of the bill establishes the timing in which payments under contracts requiring reimbursements of the federal fuel excise taxes must be paid. Current state law gives the licensed distributor the right to defer the remittance of any state tax to the supplier until the date the supplier, as trustee, must pay the tax to this state or to another state. This allows the distributor to retain the interest on the state tax monies until they are due for payment. The proposed bill would provide that a contract subject to North Carolina law must afford the distributor the same election for the timing of federal tax remittance that the distributor has for state tax remittance. The proposed change will have no state General Fund impact. The legislation will have no impact on the state's Department of Revenue fuel tax collections, revenues, or payment schedules. Rather, it is designed to affect the timing of payments on the federal excise tax by fuel distributors.

The remainder of the bill includes technical changes to the motor fuel tax, some of which will have minimal fiscal impact. The Motor Fuels Division of the N.C. Department of Revenue (the Division) is responsible for the implementation and enforcement of the changes. *This fiscal note will focus solely on those sections of the proposed legislation that have a financial impact.*

Section 4 of the bill adds a penalty for improper use of vehicle identification markers that are necessary under the International Fuel Tax Agreement (IFTA) for legal travel in the United States and Canada. When the Secretary of Revenue registers a motor carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. However, the markers are not assigned on a Vehicle Identification Number (VIN) basis. Rather, each motor carrier requests a certain number of markers for its fleet and is then responsible for accounting for each marker listed with the company. The markers must be maintained for audit purposes and, most often, the Division finds a higher incidence of missing and unaccounted for markers (proposed $100 penalty) than display of unlawfully obtained markers (proposed $1,000 penalty.) Revenues realized from this penalty are difficult to estimate because accountability efforts, enforcement practices, and auditing opportunities will change after the penalty is put into effect. However, Fiscal Research can establish a base estimate from current Division data. The Secretary of Revenue assigned over 100,000 markers in the state for 2002. The Division is required to audit 3% of its motor carrier base each year. There were 129 markers unaccounted for in the six-month period between January and June 2002. Doubling this for an annual estimate would generate $25,800 in penalties. All the revenues generated from these two penalties are payable to the Department of Revenue or the Division of Motor Vehicles.

Section 10(a)(1) of the bill removes the motor fuel excise tax exemption on dyed diesel fuel used to operate special mobile equipment. This proposed change conforms the state to federal law by not allowing it to use dyed diesel fuel on the highway. The Division will see increased motor fuel tax revenues; however, because data are not maintained on the total number of special mobile equipment vehicles, no exact estimate can be made.

Section 10(a)(5) of the bill clarifies that the motor fuel excise tax is due on motor fuel that is destined for delivery to another state and is then diverted and delivered in this state. This practice is in place today; however, suppliers are currently accounting for it in a variety of different ways on one of four motor fuel tax forms to reflect the new delivery state. The suppliers are not obligated to perform this function, and many do not or could cease doing so in the future. The legislation seeks to require the distributors to perform the paperwork change by

requiring the backup tax form to be filled out with the proper diversion number for the new destination. This change will make it more apparent when a diversion has occurred and to which state motor fuel taxes are due. It will also be easier for the Division to compare the monthly diversion report to the backup tax forms for audit purposes. Due to the increased ease of auditing a motor carrier, the Division will potentially see a minimal increase in motor fuel tax revenues.

Sections 11 and 13 of the bill exempt local government entities from paying a motor fuel tax and thus necessitating the need for receiving a refund. The following table shows the refunds issued in recent years.

Fiscal Year	1999-2000		2000-2001	
	City	County	City	County
Quarter 1	$1,489,630.54	$754,584.10	$1,575,095.15	$916,539.92
Quarter 2	$1,551,601.65	$829,986.70	$1,080,506.83	$748,063.84
Quarter 3	$1,426,540.97	$712,121.66	$2,160,325.59	$944,865.85
Quarter 4	$1,644,436.73	$786,002.66	$469,891.98	$360,380.05
Subtotal	$6,112,209.89	$3,082,695.12	$5,285,819.55	$2,969,849.66
FY Total	$9,194,905.01		$8,255,669.21	

The proposed exemption will be slightly revenue positive for local governments because of the interest that will be earned on funds that once went to fuel tax payments before being refunded. The proposal will save the Division from processing the quarterly refunds to local governments. Float will no longer be generated on the tax revenue paid by local governments before the state refunds the funds. Fiscal Research estimates the annual float loss would have been $227,030 for fiscal year 2000-01 and $252,860 for fiscal year 1999-00 (calculated by using half the fiscal year total at a 5.5% interest rate). The average annual estimated loss from the Highway Fund is approximately $240,000.

Sections 15 of the bill simplifies the penalty against transporters for transporting motor fuel without a shipping document or with a false or incomplete shipping document and delivering motor fuel to a destination state other than that shown on the shipping document. The penalty is $5,000 for railroad tank car or a transport truck. For the penalty to be assessed, actual offloading of the fuel must be seen. Officers will now be able to enforce the penalty on-site after a vehicle is stopped, which is the same as current dyed diesel penalty enforcement. Although this penalty has not been used heavily to date, the proposed changes may increase assessments and revenues. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute.

Section 16 of the bill regulates motor fuel transported by a tank wagon after the fuel has left the terminal. Proper documentation as mandated in the statute must be included in the vehicle at all times. A violation of this statute would be grounds for a civil penalty in the amount of $1,000. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute. However, the Division has no way to determine how many penalties will be assessed under the new regulations.

Section 17 of the bill changes the penalty for buying or selling non-tax-paid motor fuel to a flat penalty of $250 from the varying amounts based on gallons dispensed currently listed in the statutes. Officers have not been assessing the penalty because it was not possible to determine the number of gallons dispensed. The proposed changes will remove the gallon provision and allow a flat penalty to be assessed. Revenues generated from the penalties are payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue to split between the Highway Fund and the Highway Trust Fund as mandated by statute. It is not possible to estimate how many penalties will be assessed under the new process.

SOURCES OF DATA: N.C. Department of Revenue Motor Fuels Division

TECHNICAL CONSIDERATIONS: Pending court proceedings may change the fund designation for the collected penalties. Instead of having the funds earmarked for the Highway Fund or Highway Trust Fund, the outcome of the legal proceedings could require the funds to be allocated to local public school units.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic

APPROVED BY: James D. Johnson

DATE: July 25, 2002

MINUTES

HOUSE COMMITTEE ON FINANCE
August 7, 2002

The House Committee on Finance met at 8:30 a.m. on Wednesday, August 7, 2002 in Room 544 of the Legislative Office Building. Members present were: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chair Hill; and Representatives Alexander, Capps, Cox, Decker, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, and Cunningham. Staff persons present included: Trina Griffin, Richard Bostic, Linda Millsaps, Martha Walston, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. Sergeants-at-Arms included Dusty Rhodes, Walter Spell, Bob Fowler, and Jim Womack. The Agenda and Visitor Registration Sheet are incorporated into the minutes as **Attachments 1 and 2.**

Representative Wainwright called the meeting to order. He welcomed the Pages, Chip Farrar of Chatham County, Andrew Lamar of Randolph County, Zach Fulliniti of Mecklenburg County, and Rob Wilson of Mecklenburg County. The Committee considered the following bills.

HOUSE BILL 1520, A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO AMEND THE DEFINITION OF QUALIFIED GRANTEE BUSINESS. The bill was back in House Finance for concurrence in an amendment adopted on the Senate Floor. The Chair recognized Representative Allen to present the bill. Representative Hill moved that the committee concur. The committee recommended that the House concur. **The Committee Report, Committee Substitute, House and Senate Amendments, Bill Analysis, and Fiscal Note are included in Attachment 3.**

HOUSE BILL 1685, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CLAYTON TO ENTER INTO AGREEMENTS FOR PAYMENTS IN LIEU OF ANNEXATION. The Chair recognized Representative Daughtry to present the bill. Representative Buchanan moved for the adoption of the Proposed Committee Substitute (PCS) for consideration by the Committee. This was a local bill that would annex five tracts to the Town of Four Oaks in Johnston County and de-annex one tract. Representative Daughtry stated that there was no opposition to the bill. Representative Rayfield moved for a favorable report. A favorable report was given to the Committee Substitute Bill. **The Committee Report, Proposed Committee Substitute, and Bill Analysis, are included in Attachment 4.**

SENATE BILL 1037, A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION. The Chair recognized Senator Hoyle to present the bill to the committee. Senator Hoyle stated that the bill would modify the procedures required before construction, expansion, modification, or operation of an air contaminant source and its components could commence. The bill would establish notification and review procedures for permit applicants, establish an application fee, and prohibit the use of economic and financial losses incurred by a person who proceeds without a permit as evidence during administrative and judicial review of permit decisions. The fourth edition of the bill also required notice by publication of an owner's intent to expand, modify, or operate an air contaminant source, and would require the notice to include the name and address information on the facility and the applicant.

Representative Luebke presented a technical amendment to amend the bill on page 6, line 29. The amendment would insert quotation marks at the end of that line. Representative Luebke moved for adoption of the amendment. The amendment was adopted. This was Amendment 1.

Representative Hackney presented an amendment to amend the bill on page 3, lines eight through 12. He stated that the debate on the bill was how far along you were allowed to go in construction before you got the permit. The bill, as written, would allow you to complete the construction before getting a permit. This amendment would allow construction to start, but it did not allow completion of the construction. The amendment had the backing of the Department of Environment and the Governor's office. Senator Hoyle stated that you could not operate the business without getting the permit. North Carolina needed to facilitate business and industry without hurting the environment. He asked that the committee vote against the amendment. Representative McMahan asked George Givens, Committee Counsel, about a previous bill that was similar to this bill, and why the prior bill did not work. Mr. Givens stated that the prior bill expedited permit review for permit applications that were signed off on under a professional engineer seal. It was a different approach to speeding up the permit process. Representative Wainwright recognized Keith Overcash of the Division of Air Quality Control to expand on the intent of the prior bill. Mr. Overcash stated that the prior bill

expedited review, but it did not allow construction. Representative Hackney expressed concern that once the construction was finished and money had been spent towards the project, the regulators were under pressure to sign off on the project. Representative Gibson stated that the bill gave North Carolina an edge regulatory, it did not damage the environment. He asked the committee to defeat the amendment. Representative Gray, Womble, and Weiss spoke in support of the amendment. The amendment was adopted by a show of hands of 15 yes and 14 no votes. Refer to Amendment #2.

Representative McComas sent forth a third amendment which amended the bill on page 6, lines 21 through 25. The amendment clarified that a permit was needed for asphalt plants. Representative McComas moved for the adoption of the amendment. Representative Gibson spoke in opposition to the amendment. The Committee adopted the amendment. Refer to Amendment 3.

The committee continued their discussion of the bill as amended. Representative Wainwright invited interested parties to speak on the bill. Mollie Diggins, State Director of the North Carolina Chapter of the Sierra Club thanked the committee for the amendments that were adopted. She felt the amendments addressed public concerns. Mr. Randolph Cloud of the American Lung Association stated that it was important to preserve the quality of air and life in North Carolina. Mr. Steve Wall of the Conservation Council thanked the committee for adopting the Hackney amendment. Mr. David Mickey of Blue Ridge Environmental Defense League spoke in opposition to Senate Bill 1037. Ms. Leslie Bevacqua of North Carolina Citizens for Business and Industry (NCCBI) stated that she was disappointed with the Hackney amendment. The bill did not harm air quality standards and it would help with economic development. NCCBI did support the bill, but the Hackney amendment did not help business industry. Mr. Preston Howard of Manufacturers and Chemical Industry Council of North Carolina stated that he was disappointed with the Hackney amendment. The amendment hurt small industries that might come to the state. The bill, as amended, did nothing to benefit the business community.

Representative Womble moved for a favorable report of the Committee Substitute as amended. The committee gave a favorable report to the Committee Substitute. **The Committee Report, Proposed House Committee Substitute, House Committee Substitute, Bill Analysis, Fiscal Note, Amendments 1, 2, and 3, and comments from interested parties, are included in Attachment 5.**

The meeting adjourned at 10:10 a.m.

Respectfully submitted,

Blinda Edwards

Blinda Edwards, Committee Assistant

William L. Wainwright

Representative William Wainwright
Presiding Chair

Attachment 1

AGENDA

House Finance Committee

August 7, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1520	EXTEND QUALIFIED BUSINESS VENTURE TAX CREDIT REP. ALLEN
HB 1685	CLAYTON ANNEXATIONS- REP. DAUGHTRY
SB 1037	NO AIR PERMIT REQUIRED UNTIL FACILITY OPERATIONAL SENATOR HOYLE

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 7, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCMBA
HASKELL RHETT	NC STATE PORTS AUTHORITY
Kim Hibbard	NCLM
PRESTON HOGED	MCIC
Jimmy Fullbright	Hunton & Wms.
Julie Woodson	NCCBI
Angie Harris	MTE
Tim Minton	NC Home Builders Association
Bob Sloan	NC Forestry Assoc
RE McNAIR	CA. Pacific
BILL RUSTIN	Assn of Comm Pharmacists

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 7, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie English	Charlotte Chamber
Leslie Bevacqua	NCCBF
Fred Allen	NC Aggregates Assn.
Mac Boxley	NC Aggregates Assn
Sam Taylor	NCBIO
David Mabry	BIOSL
Tom Dunn	NC Enviro Defense
Pricey Harrison	Beaufort NC
Hawley Truax	Office of the Governor
Molly Diggins	NC Sierra Club
Robert E. Ward	American Lung Association
David Knight	NC Sierra Club,

VISITOR REGISTRATION SHEET

FINANCE — AUGUST 7, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Keith Overcash	DENR - DAQ
Lisa Walls	NC CoastNet
Letitia Withrow	NC State Water
Laura DeVivo	DENR
Dan Oakley	DENR/OGC
Marc Meyer	NCACC
Franklin Freeman	Buncombe Co.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
H.B. 1520 A BILL TO BE ENTITLED AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO AMEND THE DEFINITION OF QUALIFIED GRANTEE BUSINESS .

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1520
Committee Substitute Favorable 6/26/02

Short Title: Extend Qualified Business Venture Tax Credit. (Public)

Sponsors:

Referred to:

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS AND TO AMEND THE DEFINITION OF QUALIFIED GRANTEE BUSINESS.

The General Assembly of North Carolina enacts:

SECTION 1. Section 7 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, is repealed.

SECTION 2. Section 10 of Chapter 443 of the 1993 Session Laws, as amended by Section 29A.15 of S.L. 1998-212, reads as rewritten:

"Sec. 10. Section 6 of this act is effective upon ratification. ~~Section 7 of this act becomes effective for investments made on or after January 1, 2003.~~ The remainder of this act becomes effective for taxable years beginning on or after January 1, 1994.

A business registered as a qualified business venture or a qualified grantee business before January 1, 1994, retains its registration until the renewal date for the registration of that business under Part 5 of Article 4 of Chapter 105 of the General Statutes as in effect before January 1, 1994. The Secretary of State shall not grant renewal of a registration as a qualified business venture or a qualified grantee business unless at the time of filing the renewal application, the business meets the requirements then in effect for a new registration.

Notwithstanding the provisions of G.S. 105-163.014(a), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a sibling of the taxpayer provides services for compensation to the business in which the taxpayer invested.

Notwithstanding the provisions of G.S. 105-163.014(d), as amended by this act, a credit under Part 5 of Article 4 of Chapter 105 of the General Statutes for an investment made before January 1, 1994, is not forfeited solely on the grounds that a redemption of the securities received in the investment is made within five years after the investment was made.

The Secretary of State may require a qualified business venture or a qualified grantee business that is unable to renew its registration after January 1, 1994, to file reports the Secretary of State considers appropriate to determine the location of the headquarters and principal business operations of the business until three years after the date of the last investment in the business that qualified for the tax credit allowed under Part 5 of Article 4 of Chapter 105 of the General Statutes."

SECTION 3. G.S. 105-163.010(9) reads as rewritten:

"§ 105-163.010. Definitions.

The following definitions apply in this Part:

...

(9) Qualified grantee business. – A business that (i) ~~has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii)~~ is registered with the Secretary of State under G.S. ~~105-163.013.~~105-163.013, and (ii) has received during the preceding three years a grant or other funding from a federal agency under the Small Business Innovation Research Program administered by the United States Small Business Administration or from an organization that meets any of the following qualifications:

a. It is a domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the biotechnology industry, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years..

b. It is a domestic or foreign corporation that (i) is tax-exempt pursuant to section 501(c)(3) of the Code, (ii) has as its principal purpose the stimulation of the development of the microelectronics and communication industries, and (iii) in furtherance of that purpose has received, or is a successor in interest to an organization that has received, direct appropriations from the State in at least three fiscal years.

c. It is an institute that (i) is administratively located within a constituent institution of The University of North Carolina, (ii) is financed in part by a domestic or foreign corporation that is tax-exempt pursuant to section 501(c)(3) of the Code, (iii) has as a principal purpose the stimulation of economic development based on the advancement of science, engineering, and technology, and (iv) funds, either directly or in collaboration

with other entities, small businesses engaging in developing technology."

SECTION 4. G.S. 105-163.013(c) reads as rewritten:

"(c) Qualified Grantee Businesses. - In order to qualify as a qualified grantee business under this Part, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. ~~A business meets the requirements for registration as a qualified grantee business if it has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program.~~The requirements for registration as a qualified grantee business are set out in G.S. 105-163.010(9).

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Part for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection."

SECTION 5. Part 5 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.015. Sunset.**

This Part is repealed effective for investments made on or after January 1, 2004."

SECTION 6. Sections 3 and 4 of this act become effective January 1, 2003. Notwithstanding the amendments to G.S. 105-163.010 and G.S. 105-163.013 in Sections 3 and 4 of this act, a business to which a grant or other funding was committed before January 1, 2003, by the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program may still qualify as a qualified grantee business under the provisions of G.S. 105-163.010 and G.S. 105-163.013 as they existed before the enactment of this act. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1520

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

H1520-ASC-45 [v.3]

Date 7-23 ,2002

Comm. Sub. [NO]
Amends Title [YES]
Second Edition

Senator Hoyle

moves to amend the bill on page 1, lines 3 and 4, by rewriting the lines to read:

"BUSINESS INVESTMENTS, TO AMEND THE DEFINITION OF QUALIFIED GRANTEE BUSINESS, TO EXTEND THE SUNSET ON THE STATE PORTS TAX CREDIT, AND TO CLARIFY AND AMEND THE NORTH CAROLINA STATE PORTS AUTHORITY'S FEE-SETTING AUTHORITY.";

on page 3, between lines 28 and 29 by inserting the following between those lines:

"**SECTION 6(a).** Section 4 of Chapter 977 of the 1991 Session Laws, as amended by Section 3 of Chapter 495 of the 1995 Session Laws, by Section 29.1 of S.L. 1997-443, and by Section 1 of S.L. 2001-517, reads as rewritten:

'Sec. 4. This act is effective for taxable years beginning on or after March 1, ~~1992,~~ 1992. ~~and expires for taxable years beginning on or after January 1, 2003.~~'

SECTION 6(b). Section 4 of Chapter 681 of the 1993 Session Laws, as amended by Section 17 of Chapter 17 of the 1995 Session Laws, by Section 4 of Chapter 495 of the 1995 Session Laws, by Section 29.1 of S.L. 1997-443, and by Section 2 of S.L. 1997-443 reads as rewritten:

'Sec. 4. This act is effective for taxable years beginning on or after January 1, ~~1994,~~ 1994. ~~and expires for taxable years beginning on or after January 1, 2003.~~'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1520

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

H1520-ASC-45 [v.3]

SECTION 6(c). G.S. 105-130.41 is amended by adding a new subsection to read:

'(d) Sunset. -- This section is repealed effective for taxable years beginning on or after January 1, 2004.'

SECTION 6(d). G.S. 105-151.22 is amended by adding a new subsection to read:

'(d) Sunset. -- This section is repealed effective for taxable years beginning on or after January 1, 2004.'

SECTION 7(a). G.S. 143B-454(a)(11) reads as rewritten:

. . .

'(11) Have power to adopt, alter or repeal its own bylaws, rules and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, and may provide for the appointment of such committees, and the functions thereof, as the Authority may deem necessary or expedient in facilitating its ~~business;~~ business. The Authority may establish fees for its services. In establishing these fees, the Authority shall consider the cost of providing service, revenue requirements, the cost of similar services at other seaports in the South Atlantic region, and any other factors it considers relevant. The Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations no later than 30 business days after it establishes or increases the fee.'

SECTION 7(b). G.S. 150B-1(d) is amended by adding a subdivision to read:

'(11) The North Carolina State Ports Authority with respect to fees established pursuant to G.S. 143B-454(a)(11).'

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1520

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

H1520-ASC-45 [v.3]

SECTION 7(c). G.S. 12-3.1 is amended by adding a new subsection to read:

'(d)In lieu of the requirements of subdivision (a)(2) of this section, the North Carolina State Ports Authority shall report the establishment or increase of any fee to the Joint Legislative Commission on Governmental Operations as provided in G.S. 143B-454(a)(11).' ";

and by renumbering the following section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED 47-1 V FAILED _____ TABLED _____

J. Pruitt 7-23-02

HOUSE BILL 1520:
Extend Qualified Business Venture Tax Credit

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Allen (Revenue Laws Recommendation)
Date:	August 6, 2002		
Version:	2nd Edition with Senate Amendment	**Summary by:**	Martha Walston* Committee Counsel

SUMMARY: House Bill 1520, as it passed the House, extends the sunset for the tax credit for qualified business investments for one year. Without this bill, that tax credit would expire for investments made on or after January 1, 2003. **The bill is back in House Finance to decide whether to concur in an amendment adopted on the Senate Floor.**

The Senate amendment to HB 1520 does the following:

- Section 6(a)-(d) extends the State Ports Tax Credit to January 1, 2004. Currently this credit is scheduled to expire on January 1, 2003.
- Section 7(a) clarifies that the North Carolina State Ports Authority has fee-setting authority for its rates and tariffs, gives the Authority guidelines to use in setting those fees, and requires the Authority to report to the Joint Legislative Commission on Governmental Operations no later than 30 days after it establishes or increases a fee.
- Section 7(b) exempts the Authority's fee-setting from the rule-making portion of the Administrative Procedure Act.
- Section 7(c) allows the Authority to report to Governmental Operations after increasing or establishing a fee rather than before it establishes or increases a fee.
- It amends the title of the bill to reflect the additions of the above sections.

*Cindy Avrette, staff attorney, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1520 (Second Edition as Amended)

SHORT TITLE: Extend Qualified Business Venture Tax Credit and State Ports Tax Credit

SPONSOR(S): Representatives Allen, Luebke, et al.

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
QBV Credit		($6,000,000)			
Ports Credit		($650,000)			
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of the Secretary of State; North Carolina State Ports Authority

EFFECTIVE DATE: Section 3 (definitions) and Section 4 (Qualified Grantee Businesses) are effective January 1, 2003. The act is effective when it becomes law.

BILL SUMMARY: Sections 1 through 5 of the bill extend the individual income tax credit for Qualified Business investments from January 1, 2003, to January 1, 2004. The definition of Qualified Grantee Business is revised to replace specific named entities with general descriptions of entities that would encompass the North Carolina Biotechnology Center, MCNC, and the Kenan Institute for Engineering, Technology and Science. The new definition does not include the Technological Development Authority. Section 6 extends the State Ports Tax Credit from January 1, 2003, to January 1, 2004. Section 7 clarifies that the North Carolina State Ports Authority has fee setting authority for its services and provides the guidelines the Ports Authority is to use in setting its fees. Section 7 exempts the Ports Authority from the Administrative Procedure Act and requires the agency to report to the Joint Legislative Commission on Governmental Operations within 30 business days of establishing or increasing a fee.

ASSUMPTIONS AND METHODOLOGY:

Qualified Business Venture Tax Credit

The amount of Qualified Business Venture tax credits given each year is capped at $6 million. Requests for credits have exceeded the $6 million cap for four out of the last five years. In fact, the amount of credit requested ($19 million) in 2001 was approximately three times the amount of credit available. Given the recent investor interest in the credit program, it is likely that the $6 million annual cost of the program will continue until its sunset in 2004. The General Fund fiscal impact occurs in FY 2003-04 because the investments made in 2003 will be awarded credits on returns filed in the spring of 2004. Credit demand will not be affected by the exclusion of firms receiving grants from the Technological Development Authority because most of these firms would qualify for the credit by applying for Qualified Business Venture status with the Secretary of State.

State Ports Authority Tax Credit

Enacted in 1992 to encourage exporters to use the two State-owned port terminals at Wilmington and Morehead City, this credit was extended in 1995, 1997 and 2001. The tax credit equals the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year and has a five-year carryforward on excess credit. The maximum cumulative credit that one taxpayer may claim is $2 million.

The North Carolina State Ports Authority makes an annual report to the General Assembly detailing the annual increase in cargo tons, cargo fees, and the amount of tax credit taken in the previous year. The income tax credits reported in these annual statements since the program's inception are as follows:

1993	$ 26,867
1994	$512,003
1995	$643,965
1996	$854,645
1997	$515,977
1998	$814,986
1999	$656,134
2000*	$1,551,121
2001	$365,474

*Since the statute does not limit back certifications, four customers claimed $1,116,565 in credits for shipping expenses from previous years.

The average tax credit for the eight years 1994 through 2001 is $739,288 and the median tax credit for the same period is approximately $650,000. This fiscal note will use the median, thus extending the State Ports Authority tax credit will cost the state General Fund $650,000 in tax year 2003 or FY 2003-04. The Ports Authority staff reports that no company has reached the $2 million maximum cumulative credit and there are no companies close to the maximum amount of credits.

State Ports Authority Fees

Section 7 will have no new fiscal impact. In practice, the State Ports Authority has been setting fees for the services they provide since 1945. This section simply provides the Ports Authority with explicit statutory fee setting authority.

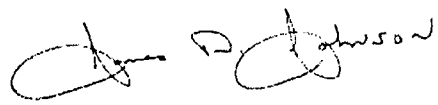
SOURCES OF DATA: Department of Revenue; North Carolina State Ports Authority Annual Reports to the General Assembly

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Richard Bostic and Jennifer Hoffman

APPROVED BY: James D. Johnson



DATE: August 5, 2002

Attachment 4

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1685 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWN OF CLAYTON TO ENTER INTO AGREEMENTS FOR PAYMENTS IN LIEU OF ANNEXATION.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1685
PROPOSED COMMITTEE SUBSTITUTE H1685-PCS6471-LBx-158

Short Title: Four Oaks Annexation/Deannexation. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO ANNEX TERRITORY AND DEANNEX TERRITORY TO THE CORPORATE LIMITS OF THE TOWN OF FOUR OAKS.

The General Assembly of North Carolina enacts:

SECTION 1. The corporate limits of the Town of Four Oaks are extended by adding the following described territory:

TRACT ONE

In Johnston County, beginning on N.C. Grid Monument "HOLTS", said grid monument having N.C. Grid Coordinates Northing = 188207.393 meters; Easting = 663768.723 meters. NAD 83; thence leaving "HOLTS" and running a grid bearing of N 65°-44'-48" W and a horizontal ground distance of 430.89 feet to a new steel cotton spindle set in the center of SR 1182 (Boyette Road); thence running along the center of SR 1182 as follows: N 81°-11'-29" E 26.60 feet; thence N 81°-11'-19" E 49.93 feet; thence N 80°-44'-14" E 49.99 feet; thence N 79°-21'-37" E 50.00 feet; thence N 75°-55'-59" E 49.99 feet; thence N 66°-27'-48" E 49.67 feet; thence N 59°-15'-07" E 50.00 feet; thence N 46°-33'-56" E 49.99 feet; thence N 41°-24'-01" E 49.99 feet; thence N 39°-51'-46" E 50.09 feet; thence N 39°-43'-48" E 50.00 feet to a steel cotton spindle set in the center of SR 1182; THE TRUE POINT OF BEGINNING; thence leaving the center of SR 1182 and running a new line with the Robert L. Farmer et al property N 51°-29'-22" W 31.20 feet to a new concrete monument set in the new northern right-of-way of SR 1182; thence leaving said SR 1182 and running a new line with the Robert L. Farmer et al property N 51°-59'-22" W 737.46 feet to a new iron pipe set in the Bobby C. Raynor property line as described in Deed Book 1108, Page 741; thence running along the said Bobby C. Raynor property line S 88°-03'-06" E 934.51 feet to an existing iron pipe in the existing northern right-of-way of SR 1182; thence continuing along the said Bobby C. Raynor property line S 88°-03'-06" E 37.61 feet to an existing P.K. Nail in the center

of SR 1182; thence running along the center of SR 1182 S 39°-43'-48" W 572.51 feet to a new steel cotton spindle set in the center of said road; THE TRUE POINT OF BEGINNING and being designated "TRACT ONE" containing 5.049 Acres according to a survey and plat for the Johnston County Board of Education prepared by Byrd Surveying, P.A., dated January 31, 2001 and recorded in Plat Book 57, Page 453 of the Johnston County Registry of Deeds.

TRACT TWO

In Johnston County, beginning on N.C. Grid Monument "HOLTS", said grid monument having N.C. Grid Coordinates Northing = 188207.393 meters; Easting = 663768.723 meters, NAD 83; thence leaving "HOLTS" and running a grid bearing of N 65°-44'-48" W and a horizontal ground distance of 430.89 feet to a new steel cotton spindle set in the center of SR 1182 (Boyette Road), a new corner with the Robert L. Farmer, et al property; THE TRUE POINT OF BEGINNING; thence leaving the center of SR 1182 and running a new line with the said Robert L. Farmer, et al property N 08°-48'-31" W 30.00 feet to a new iron pipe set in the existing Northern right-of-way of SR 1182; thence running a new line with the Robert L. Farmer, et al property establishing a new Northern right-of-way of SR 1182, along a curve to the left, said curve being identified as curve number C-1 having a Delta Angle = 38°-12'-17", Radius = 734.00 feet, Arc length = 489.43 feet, chord bearing = N 62°-05'-20" E, and chord distance = 480.415 feet to a new concrete monument set in the new northern right-of-way of SR 1182, a common corner with Tract One as shown on a survey map as referenced below; thence leaving said concrete monument and running along the line of Tract One S 51°-59'-22" E 31.20 feet to a steel cotton spindle set in the existing centerline of SR 1182; thence running along the existing centerline of SR 1182 as follows: S 39°-43'-48" W 50.00 feet; thence S 39°-51'-46" W 50.09 feet; thence S 41°-24'-01" W 49.99 feet; thence S 46°-33'-56" W 49.99 feet; thence S 59°-15'-07" W 50.00 feet; thence S 66°-27'-48" W 49.67 feet; thence S 75°-55'-59" W 49.99 feet; thence S 79°-21'-37" W 50.00 feet; thence S 80°-44'-14" W 49.99 feet; thence S 81°-11'-19" W 49.93 feet; thence S 81°-11'-29" W 26.60 feet to a new steel cotton spindle set in the center of SR 1182, THE TRUE POINT OF BEGINNING and being designated "TRACT TWO" containing 0.520 Acres according to a survey and plat for the Johnston County Board of Education prepared by Byrd Surveying, P.A., dated January 31, 2001 and recorded in Plat Book 57, Page 453 of the Johnston County Registry of Deeds.

TRACT THREE

In Johnston County, beginning on N.C. Grid Monument "HOLTS", said grid monument having N.C. Grid Coordinates Northing = 188207.393 meters; Easting = 663768.723 meters, NAD 83; thence leaving "HOLTS" and running a grid bearing of N 65°-44'-48" W and a horizontal ground distance of 430.89 feet to a new steel cotton spindle set in the center of SR 1182 (Boyette Road); thence running along the center of SR 1182 as follows: N 81°-11'-29" E 26.60 feet; thence N 81°-11'-19" E 49.93 feet; thence N 80°-

44'-14" E 49.99 feet; thence N 79°-21'-37" E 50.00 feet; thence N 75°-55'-59" E 49.99 feet; thence N 66°-27'-48" E 49.67 feet; thence N 59°-15'-07" E 50.00 feet; thence N 46°-33'-56" E 49.99 feet; thence N 41°-24'-01" E 49.99 feet; thence N 39°-51'-46" E 50.09 feet; thence N 39°-43'-48" E 50.00 feet to a steel cotton spindle set in the center of SR 1182; thence continuing along the center of SR 1182 N 39°-43'-48" E 572.51 feet to an existing P.K. Nail in the center of SR 1182, a common corner with the Bobby C. Raynor property as described in Deed Book 1108, Page 741 and shown on a plat recorded in Plat Book 36, Page 437, said existing P.K. Nail being THE TRUE POINT OF BEGINNING; thence leaving said SR 1182 and running along the Robert L. Farmer, et al property line N 88°-03'-06" W 37.61 feet to an existing iron pipe in the Northern right-of-way of SR 1182; thence continuing along the said Farmer property line N 88°-03'-06" W 1238.21 feet to an existing 1" iron rebar, a common corner with the said Farmer et al property; thence continuing along the said Farmer et al property line N 00°-10'-55" E 615.46 feet to an existing iron stake, a common corner with Lot 22 of the Forest Hills Subdivision, Section Two as recorded in Plat Book 15, Page 167; thence running along the Eastern property line of said Lot 22 and the end of Harper Avenue N 00°-11'-55" W 260.02 feet to a new iron pipe, the southeast corner of Lot 21 in the said Forest Hills Subdivision, Section Two; thence running new lines with the property of Bobby C. Raynor S 88°-51'-38" E 228.48 feet to a concrete monument set; thence N 38°-00'-38" E 350.87 feet to a concrete monument set; thence S 51°-59'-22" E 1168.15 feet to an existing iron pipe, a common corner with the Wayne Parker and Sarah Parker lot as described in Deed Book 1153, Page 414; thence running along the southwest line of the said Parker lot S 51°-59'-22" E 200.00 feet to an existing iron pipe, thence S 51°-59'-22" E 29.13 feet to an existing P.K. Nail in the center of SR 1182; thence running along the center of SR 1182 S 39°-24'-26" W 427.49 feet to an existing P.K. Nail in the center of SR 1182, THE TRUE POINT OF BEGINNING and being designated "TRACT THREE" containing 27.584 Acres according to a survey and plat for the Johnston County Board of Education prepared by Byrd Surveying, P.A. dated January 31, 2001 and recorded in Plat Book 57, Page 453 of the Johnston County Register of Deeds.

TRACT 4

In Johnston County beginning on N.C. Grid Monument "Holts", said Grid Monument having coordinates N=188207.393(meters), E=663768.723 (meters) NAD 83; thence running N 22°-22'-43" E 409.25 feet to a new iron pipe set in the northern right-of-way of Interstate 95, a new corner with the Robert L. Farmer and wife, Martha L. Farmer and Nancy N. Farmer tract of land as shown in a Will 84-E-422, the TRUE POINT OF BEGINNING; thence running a new line with the said Farmer tract N 50°-16'-12" W 71.76 feet to a new iron pipe set in the southern right-of-way of Boyette Road (SR 1182); thence continuing with the said Farmer tract N 50°-16"-12" W 30.00 feet to a new steel cotton spindle set in the center of Boyette Road (SR 1182); thence running along the center of Boyette Road (SR 1182) N 39°-43'-48" E 532.00 feet to an existing P.K. Nail, a common corner with the Norwood B. Barbour and Jean L. Barbour tract of

land as recorded in Deed Book 2001, Page 154; thence leaving said Boyette Road and running along the said Barbour line S87°-18'-25" E 348.59 feet to an existing iron pipe in the northern right-of-way of Interstate 95; thence running along the northern right-of-way of Interstate 95 in a southwest direction along a curve to the right having curve data as follows: Delta Angle =06°-29'-27", Radius = 5600.00 feet, Arc Length = 634.40 feet, Chord Distance = 634.06 feet and Chord Bearing = S 52°-27'-08" W to an existing concrete right-of-way monument; thence continuing along the Northern right-of-way of Interstate 95 in a southwest direction along a curve to the right having curve data as follows: Delta Angle = 01°-19'-07", Radius = 5600.00 feet, Arc Length = 128.87 feet, Chord Distance = 128.865 feet and Chord Bearing = S 56°-21'25" W to a new iron pipe set in the northern right-of-way of Interstate 95, the TRUE POINT OF BEGINNING and containing 2.717 Acres according to a survey title "Surveyed For Johnston County Board of Education" by Byrd Surveying, P.A. dated May 8, 2001 and recorded in Plat Book_____, Page_____of the Johnston County Registry of Deeds.

TRACT 5

In Johnston County, beginning on a new iron pipe set in the Northern right-of-way of Harper Avenue, said new iron pipe being a common corner with the 27.584 acre tract owned by the Johnston County Board of Education and identified as "TRACT THREE" on a survey and plat by Byrd Surveying, P.A. for the Johnston County Board of Education dated Jan. 31, 2001 and recorded in Plat Book 57, Page 453 of the Johnston County Registry of Deeds, said new iron pipe also being the southeast corner of Lot 21, Forest Hills Subdivision, Section Two as recorded in Plat Book 15, Page 167 of the Johnston County Registry of Deeds, said new iron pipe also being a common corner with the Bobby C. Raynor property; thence leaving said new iron pipe and running along the Bobby C. Raynor property line S 88°-51'-38" E 228.48 feet to a concrete monument; thence leaving the said Bobby C. Raynor line and running S 38° -00'-38" W 75.01 feet to a concrete monument; thence running N 88°-51'-38" W 182.08 feet to a new iron pipe marking the southern end of Harper Avenue right-of-way as shown on the map herein referenced; thence running along the end of Harper Avenue N 00°-11'-55 W 60.02 feet to a new iron pipe, the point of BEGINNING and being designated a "PUBLIC ROAD ACCESS AND UTILITY EASEMENT" to be conveyed to the Town of Four Oaks, containing 0.283 acres according to a survey and plat prepared by Byrd Surveying, P.A. dated January 31, 2001 and recorded in Plat Book 57, Page 453 of the Johnston County Registry of Deeds.

SECTION 2. Effective September 11, 2001, the corporate limits of the Town of Four Oaks are reduced by removing the following described territory:

That certain parcel of land in Ingrams Township, Johnston County, more particularly described as a certain lot or parcel of land lying on the West side of US Highway #701, and more particularly described as follows: BEGINNING at a stake in the western right-of-way of US Highway #701, corner of Bessie Stanley property, and runs thence in a northwesterly direction along the northern boundary line of Bessie Stanley's property approximately 109 feet to a ditch; thence along said ditch in a northerly

direction approximately 167 feet to a stake; thence in an easterly direction approximately 159 feet to the western right-of-way of US Highway #701; thence along the western right-of-way of US Highway #701 200 feet to the point of beginning.

SECTION 3. Except as provided herein, this act is effective when it becomes law.

HOUSE BILL 1685:
Four Oaks Annexation/Deannexation

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Daughtry
Date:	August 6, 2002	**Analysis by:**	Martha Walston
Version:	PCS		Committee Counsel

SUMMARY: The proposed committee substitute for House Bill 1685 is a local bill that annexes five tracts to the Town of Four Oaks in Johnston County and de-annexes one tract.

1. *The five tracts to be annexed are owned by the Johnston County Board of Education. The new Four Oaks Middle School has been built on the property, and the School Board wants to be able to access municipal services.*
2. *The one tract to be de-annexed is not contiguous to the corporate limits and no longer has a business on its premises. The owner of the tract has requested the de-annexation.*

The Town Board of Commissioners has approved both the annexation and de-annexation.

CURRENT LAW: Annexation is one method that a town may employ to extend its corporate limits, and the process must be done in accordance with Article 4A of Chapter 160A. Annexation may be either voluntary or involuntary. A voluntary annexation requires that the governing board of a municipality pass an ordinance upon presentation of a petition signed by the owners of all real property within the area to be annexed. An involuntary annexation requires, among other things, that the property meet certain characteristics:

- The area to be annexed must be adjacent or contiguous to the municipality's boundaries;
- At least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary; and
- No part of the area may be included within the boundary of another incorporated municipality.

In addition to the requirements concerning location of the area in relation to the municipality's existing boundaries, the area must also be "developed for urban purposes" by meeting one of several standards concerning population, density, and development.

If property does not meet the statutory requirements for annexation, the municipality does not have the authority to annex the area. However, the General Assembly can extend the corporate limits of a municipality to encompass areas that the municipality would not statutorily have the authority to annex.

BILL ANALYSIS: Section 1 of House Bill 1685 would add five tracts to the city limits of the Town of Four Oaks. On June 13, 2001, the Johnston County Board of Education passed a resolution requesting that the 5 tracts be annexed to the Town. The resolution states that the property was purchased by the Board of Education; that the Board intends to build Four Oaks Middle School on the property to be opened in the fall of 2002; and that the Board seeks the services of the closest medical, fire, law enforcement, and other related services. The Town

Board of Commissioners approved the annexation on May 13, 2002. The Board of Education would like to have the property annexed as soon as possible because the new school opens in August.

Section 2 would de-annex a tract of property which is not contiguous to the town limits and which no longer has a business located on its premises. The property owner requested the de-annexation. The Town Board of Commissioner adopted a resolution to de-annex the property as of September 11, 2001, pending approval by the General Assembly.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ House Committee Substitute for
S.B. 1037 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION.

☐ 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 (# 2), ☐ ~~which changes the title~~, unfavorable as to House committee substitute bill #1.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1037

Agriculture/Environment/Natural Resources Committee Substitute Adopted 9/19/01

Finance Committee Substitute Adopted 9/26/01

House Committee Substitute Favorable 7/31/02

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1037-PCS6891-RT-106

Short Title: No Air Pmt. Req. Until Facility Operational. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.108(a), as amended by Section 2 of S.L. 2002-4, reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source, except as provided in G.S. 143-215.108A.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to

cause air ~~pollution;~~pollution, except as provided in G.S. 143-215.108A.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

~~(4) Enter into an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.~~"

SECTION 2. G.S. 143-215.108(f) reads as rewritten:

"(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to ~~construction or~~ operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of ~~construction or~~ operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

SECTION 3. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.108A. Control of sources of air pollution; construction of new facilities and the expansion of existing facilities.**

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air-cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or device for which a permit is required under G.S. 143-215.108. A person may, however, construct any component of the facility that is peripheral to the operation of the air contaminant source, equipment, or associated air-cleaning device if the person complies with the requirements of this section. Peripheral construction includes grading, foundations, and structures not associated with an air contaminant source, equipment, or air-cleaning device. At least 30 days prior to commencing construction under this subsection, the person who owns the facility shall give notice by publication, and shall submit to the Commission a notice, of the person's intent to construct a facility for which a permit will be required under G.S. 143-215.108. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the person's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives during its review of the application for a permit, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (5) of this subsection. The person shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice to the Commission shall include all of the following:

(1) The name and location of the proposed facility and the name and address of the person who will apply for a permit under G.S. 143-215.108.

(2) The nature of the air contaminant sources and equipment associated with the facility when constructed.

(3) An estimate of total regulated air contaminant emissions associated with the facility when constructed.

(4) The air-cleaning devices that are to be employed to address each of the air contaminant sources.

(5) The construction schedule for the proposed construction.

(6) An acknowledgment by the person that the actual air contaminant sources, equipment, and associated air-cleaning devices may not be constructed until the person has obtained a permit under G.S. 143-215.108.

(7) An acknowledgment by the person that any construction prior to the issuance of a permit under G.S. 143-215.108 is undertaken at the person's own risk and with the knowledge that the person may be denied a permit under G.S. 143-215.108 without regard to the person's financial investment or construction activities.

(8) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the person's knowledge and ability, executed by the person or, if the person is a corporation, by the appropriate officers of the corporation.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or the associated air-cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air-cleaning devices in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, construct or modify any component of the facility that is peripheral to the operation of the air contaminant source, equipment, or associated air-cleaning device if the person complies with the requirements of this section. Peripheral construction includes grading, foundations, and structures not associated with an air contaminant source, equipment, or air-cleaning device. At least 30 days prior to commencing construction or modification under this subsection, the permittee shall give notice by publication, and shall submit to the Commission a notice, of the person's intent to construct a facility for which a permit modification will be required under G.S. 143-215.108. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is located; shall be at the person's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives during its review of the application for a permit modification, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air-cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The construction schedule associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air-cleaning devices may not be operated in

a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any construction prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or construction activities.

(9) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. – Upon receipt of the notice to the Commission required under subsection (a) or (b) of this section, the Commission may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility or permit modification. If at any time during construction the Commission determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request in writing that the person or permittee submit, within 15 days of receipt of the request, specific additional information related to the reasons that give rise to the determination. If, after reviewing any additional information submitted by the person or permittee, the Commission again determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request that the plans for the construction be altered in order to address the anticipated inability of the person or permittee to qualify for a permit or permit modification or the Commission may order that construction or modification cease. If the Commission orders that construction or modification cease, then construction may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the determination that resulted in the order to cease construction or modification have been adequately addressed or the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction to resume. Any order by the Commission that construction cease shall be in writing and shall set forth specific reasons for the determination that the person or permittee will not qualify for a permit.

(d) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (a) or (b) of this section. No evidence regarding any financial investment made, construction activity undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.

(e) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any construction or modification undertaken by any person, permittee, or owner of any facility pursuant to this section.

(f) Local Zoning Ordinances Not Affected. – This section shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance.

(g) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction or modification that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(h) Not Applicable to Asphalt Plants. – This section shall not apply to any facility for the manufacture, sale, or distribution of asphalt. No person may construct, modify, or operate any component of any facility for the manufacture, sale, or distribution of asphalt until the person has obtained all permits that will be required for any air contaminant source, equipment, or associated air-cleaning device at the facility.

(i) Fee. – A person or permittee who submits a notice of construction under subsection (a) or subsection (b) of this section shall pay a fee of two hundred dollars ($200.00) for each notice submitted to cover a portion of the administrative costs of implementing this section."

SECTION 4. This act is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after the date on which this act becomes law. This act does not apply to any application for a permit or permit modification under G.S. 143-215.108 that is submitted to the Environmental Management Commission prior to the date on which this act becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 1037

Agriculture/Environment/Natural Resources Committee Substitute Adopted 9/19/01

Finance Committee Substitute Adopted 9/26/01

House Committee Substitute Favorable 7/31/02

Short Title: No Air Pmt. Req. Until Facility Operational. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ANY PROSPECTIVE APPLICANT FOR AN AIR QUALITY PERMIT FOR A NEW FACILITY MAY COMMENCE CONSTRUCTION PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION AND THAT ANY CURRENT HOLDER OF AN AIR QUALITY PERMIT MAY COMPLETE NEW CONSTRUCTION AT AN EXISTING PERMITTED FACILITY PRIOR TO OBTAINING THE AIR QUALITY PERMIT TO OPERATE THAT FACILITY IF THE PROSPECTIVE APPLICANT SUBMITS A NOTICE OF THE CONSTRUCTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.108(a), as amended by Section 2 of S.L. 2002-4, reads as rewritten:

"(a) Except as provided in subsections (a1) and (a2) of this section, no person shall do any of the following things or carry out any of the following activities ~~which~~ that contravene or will be likely to contravene standards established pursuant to G.S. 143-215.107 or set out in G.S. 143-215.107D unless that person has obtained ~~from the Commission~~ a permit ~~therefor~~ from the Commission and has complied with any conditions of ~~this~~ the permit:

(1) Establish or operate any air contaminant ~~source;~~source, except as provided in G.S. 143-215.108A.

(2) Build, erect, use or operate any equipment ~~which~~ that may result in the emission of an air ~~contaminants~~contaminant or ~~which~~ that is likely to cause air ~~pollution;~~pollution, except as provided in G.S. 143-215.108A.

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be ~~emitted;~~emitted.

~~(4) Enter into an irrevocable contract for the construction and installation of any air cleaning device, or allow or cause such device to be constructed, installed, or operated.~~"

SECTION 2. G.S. 143-215.108(f) reads as rewritten:

"(f) An applicant for a permit under this section for a new facility or for the expansion of a facility permitted under this section shall request each local government having jurisdiction over any part of the land on which the facility and its appurtenances are to be located to issue a determination as to whether the local government has in effect a zoning or subdivision ordinance applicable to the facility and whether the proposed facility or expansion would be consistent with the ordinance. The request to the local government shall be accompanied by a copy of the draft permit application and shall be delivered to the clerk of the local government personally or by certified mail. The determination shall be verified or supported by affidavit signed by the official designated by the local government to make the determination and, if the local government states that the facility is inconsistent with a zoning or subdivision ordinance, shall include a copy of the ordinance and the specific reasons for the determination of inconsistency. A copy of any such determination shall be provided to the applicant when it is submitted to the Commission. The Commission shall not act upon an application for a permit under this section until it has received a determination from each local government requested to make a determination by the applicant. If a local government determines that the new facility or the expansion of an existing facility is inconsistent with a zoning or subdivision ordinance, and unless ~~Unless~~ the local government makes a subsequent determination of consistency with all ordinances cited in the determination or the proposed facility is determined by a court of competent jurisdiction to be consistent with the cited ordinances, the Commission shall attach as a condition of the permit a requirement that the applicant, prior to ~~construction or~~ operation of the facility under the permit, comply with all lawfully adopted local ordinances, including those cited in the determination, that apply to the facility at the time of ~~construction or~~ operation of the facility. If a local government fails to submit a determination to the Commission as provided by this subsection within 15 days after receipt of the request, the Commission may proceed to consider the permit application without regard to local zoning and subdivision ordinances. This subsection shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance. This subsection shall not be construed to limit any opportunity a local government may have to comment on a permit application under any other law or rule. This subsection shall not apply to any facility with respect to which local ordinances are subject to review under either G.S. 104E-6.2 or G.S. 130A-293."

SECTION 3. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.108A. Control of sources of air pollution; construction of new facilities and the expansion of existing facilities.**

(a) New Facilities. – A person may not, without obtaining a permit under G.S. 143-215.108, construct or operate an air contaminant source, equipment, or associated air-cleaning device at a site or facility where, at the time of the construction, there is no other air contaminant source, equipment, or device for which a permit is required under G.S. 143-215.108. A person may, however, construct any component of the facility that is not integral to the operation of the air contaminant source, equipment, or associated air-cleaning device, including any portion of the facility that relates to or supports both the air contaminant source, equipment, or device and other functions, such as the foundation, walls, roof, electrical wiring, and vents, if the person complies with the requirements of this section. At least 30 days prior to commencing construction under this subsection, the person who owns the facility shall give notice by publication, and shall submit to the Commission a notice, of the person's intent to construct a facility for which a permit will be required under G.S. 143-215.108. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is to be located; shall be at the person's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives during its review of the application for a permit, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (5) of this subsection. The person shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice to the Commission shall include all of the following:

(1) The name and location of the proposed facility and the name and address of the person who will apply for a permit under G.S. 143-215.108.

(2) The nature of the air contaminant sources and equipment associated with the facility when constructed.

(3) An estimate of total regulated air contaminant emissions associated with the facility when constructed.

(4) The air-cleaning devices that are to be employed to address each of the air contaminant sources.

(5) The construction schedule for the proposed construction.

(6) An acknowledgment by the person that the actual air contaminant sources, equipment, and associated air-cleaning devices may not be constructed until the person has obtained a permit under G.S. 143-215.108.

(7) An acknowledgment by the person that any construction prior to the issuance of a permit under G.S. 143-215.108 is undertaken at the person's own risk and with the knowledge that the person may be denied a permit under G.S. 143-215.108 without regard to the person's financial investment or construction activities.

(8) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the person's knowledge

and ability, executed by the person or, if the person is a corporation, by the appropriate officers of the corporation.

(b) Permitted Facilities. – A person who holds a permit under G.S. 143-215.108 may apply to the Commission for a modification of the permit to allow the person to alter or expand the physical arrangement or operation of an air contaminant source, equipment, or the associated air-cleaning device in a manner that alters the emission of air contaminants. The permittee may not operate the altered, expanded, or additional air contaminant source, equipment, or associated air-cleaning devices in a manner that alters the emission of any air contaminant without obtaining a permit modification under G.S. 143-215.108. A permittee may, however, construct or modify an air contaminant source, equipment, or the associated air-cleaning device at a facility permitted under G.S. 143-215.108 if the permittee complies with the requirements of this section. At least 30 days prior to commencing construction or modification under this subsection, the permittee shall give notice by publication, and shall submit to the Commission a notice, of the person's intent to construct a facility for which a permit modification will be required under G.S. 143-215.108. Notice by publication shall be in a newspaper having general circulation in the county or counties where the facility is located; shall be at the person's own expense; shall include a statement that written comment may be submitted to the Commission, that the Commission will consider any comment that it receives during its review of the application for a permit modification, and the Commission's address for submission of written comment; and shall include all the information required by subdivisions (1) through (6) of this subsection. The permittee shall submit a proof of publication of the notice to the Commission within 15 days of the date of publication. The notice to the Commission shall include all of the following:

(1) The name and location of the facility and the name and address of the permittee.

(2) The permit number of each permit issued under G.S. 143-215.108 for the facility.

(3) The nature of the air contaminant sources and equipment associated with the proposed modification of the permit.

(4) An estimate of total regulated air contaminant emissions associated with the proposed modification of the permit.

(5) The air-cleaning devices that are to be employed to address each of the air contaminant sources associated with the modification of the permit.

(6) The construction schedule associated with the proposed modification of the permit.

(7) An acknowledgment by the permittee that the air contaminant sources, equipment, and associated air-cleaning devices may not be operated in a manner that alters the emission of any air contaminant until the permittee has obtained a modified permit under G.S. 143-215.108.

(8) An acknowledgment by the permittee that any construction prior to the modification of a permit under G.S. 143-215.108 is undertaken at the permittee's own risk and with the knowledge that the permittee may be

denied a modification of the permit under G.S. 143-215.108 without regard to the permittee's financial investment or construction activities.

(9) A certification under oath that all of the information contained in the notice is complete and accurate to the best of the permittee's knowledge and ability, executed by the permittee or, if the permittee is a corporation, by the appropriate officers of the corporation.

(c) Review and Determination by the Commission. – Upon receipt of the notice to the Commission required under subsection (a) or (b) of this section, the Commission may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility or permit modification. If at any time during construction the Commission determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request in writing that the person or permittee submit, within 15 days of receipt of the request, specific additional information related to the reasons that give rise to the determination. If, after reviewing any additional information submitted by the person or permittee, the Commission again determines that there is a significant likelihood that a person or permittee will not qualify for a permit or permit modification under G.S. 143-215.108, the Commission may request that the plans for the construction be altered in order to address the anticipated inability of the person or permittee to qualify for a permit or permit modification or the Commission may order that construction or modification cease. If the Commission orders that construction or modification cease, then construction may resume only if the Commission either makes a subsequent determination that the circumstances that resulted in the determination that resulted in the order to cease construction or modification have been adequately addressed or the Commission issues a permit or permit modification under G.S. 143-215.108 that authorizes construction to resume. Any order by the Commission that construction cease shall be in writing and shall set forth specific reasons for the determination that the person or permittee will not qualify for a permit.

(d) Evaluation of Permit Applications; Administrative and Judicial Review of Permit Decisions. – The Commission shall evaluate an application for a permit or permit modification under G.S. 143-215.108 and make its decision on the same basis as if the construction allowed under this section had not occurred. The Commission shall consider any written comment that it receives in response to a notice by publication given pursuant to subsection (a) or (b) of this section. No evidence regarding any financial investment made, construction activity undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under G.S. 143-215.108 is admissible in any contested case or judicial proceeding involving any permit required under G.S. 143-215.108.

(e) State, Commission, and Employees Not Liable. – Every person, permittee, and owner of a facility who proceeds under this section shall hold the State, the Commission, and the officials, agents, and employees of the State and the Commission harmless and not liable for any loss resulting from any construction or modification undertaken by any person, permittee, or owner of any facility pursuant to this section.

(f) Local Zoning Ordinances Not Affected. – This section shall not be construed to affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or to affect the responsibility of any person to comply with any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance.

(g) Federal Air Quality Programs Not Affected. – This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply to any construction or modification that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, as determined solely by the Commission or by a local air pollution control program certified by the Commission as provided in G.S. 143-215.112.

(h) Not Applicable to New Asphalt Plants. – This section shall not apply to any new facility for the manufacture, sale, or distribution of asphalt. No person may construct or operate any component of any new facility for the manufacture, sale, or distribution of asphalt until the person has obtained all permits that will be required for any air contaminant source, equipment, or associated air-cleaning device at the facility.

(i) Fee. – A person or permittee who submits a notice of construction under subsection (a) or subsection (b) of this section shall pay a fee of two hundred dollars ($200.00) for each notice submitted to cover a portion of the administrative costs of implementing this section."

SECTION 4. This act is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after the date on which this act becomes law. This act does not apply to any application for a permit or permit modification under G.S. 143-215.108 that is submitted to the Environmental Management Commission prior to the date on which this act becomes law.

SENATE BILL 1037:
No Air Pmt. Req. Until Facility Operational.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Hoyle
Date:	August 7, 2002	**Summary by:**	George Givens, Committee Counsel Tim Dodge Research Assistant
Version:	4th Edition		

SUMMARY: ***Senate Bill 1037 would modify the procedures required before construction, expansion, modification, or operation of an air contaminant source and its components can commence. The bill would establish notification and review procedures for permit applicants, establish an application fee, and prohibit the use of economic and financial losses incurred by a person who proceeds without a permit as evidence during administrative and judicial review of permit decisions. The 4th edition of the bill also requires notice by publication of an owner's intent to expand, modify, or operate an air contaminant source, and would require the notice to include the name and address information on the facility and the applicant.***

The bill would become effective when it becomes law.

BACKGROUND: G.S 143-215.108 prohibits a person from carrying out activities that may contravene the air quality or emission control standards established by the Environmental Management Commission (EMC) under G.S. 143-215.107 unless the person has applied for and received a permit from the EMC. These laws prohibit the construction, alteration, or entering into an irrevocable contract for the construction or installation of any air contaminant source without a permit from the EMC.

BILL ANALYSIS: Senate 1037 modifies G.S. 143-215.108 and adds a new G.S. 143-215.108A to clearly delineate the point at which a permit approved by the EMC becomes necessary for air contaminant sources during construction, expansion, modification, or operation. The bill makes the following changes:

Consistency with local government ordinances:

Current law (G.S. 143-215.108(f)) requires facilities to be consistent with local ordinances **prior to construction or operation.** The bill amends G.S. 143-215.108(f) to require persons proposing to construct or expand to ensure the facility or expansion is consistent with local zoning or subdivision ordinances **prior to *operation***. The bill also adds a subsection (f) to G.S. 143-215.108A that states that the new section does not affect the validity of any lawfully adopted franchise, local zoning, subdivision, or land-use planning ordinance or affect the responsibility of any person to comply with any local ordinance.

Procedures for construction of new air pollution facilities:

The bill authorizes a person to construct components of a facility **that are not integral to the operation of the air contaminant source or equipment prior to obtaining an air permit,** but the person must obtain a permit **prior to *construction* or operation of the actual air contaminant source, equipment,**

or associated air-cleaning devices. Facilities would be required to notify the EMC at least 15 days prior to commencing construction and provide the EMC with the following information:

1. The name and location of the proposed facility and the name and address of the permit applicant.
2. The nature of the proposed contaminant source.
3. An estimate of regulated emissions.
4. The air cleaning devices that will be employed to address each contaminant source.
5. The expected construction schedule.
6. An acknowledgement by the person that the actual air contaminant sources may not be constructed until the permit is obtained.
7. An acknowledgement that any construction of an air contaminant source prior to the receipt of an operation permit will be performed at the applicant's own risk.
8. A certification under oath of the accuracy of the notice of construction.

The bill would also require the person who owns the facility to give notice by publication in a newspaper having general circulation in the county or counties where the facility would be located at least 15 days prior to construction. The notice by publication shall include the first five items listed above.

Procedures for facilities currently holding a permit:

The bill would allow a person that holds a current permit to modify a facility or emission source prior to obtaining a modified permit, but if the modification would alter the emissions from the facility, the facility must obtain a modified permit **prior to operation** of the modified emissions source. Notification requirements would be similar to those for a new facility and would require the following information:

1. The name and location of the proposed facility and the name and address of the permit applicant.
2. The current permit number.
3. The nature of the contaminant sources and equipment associated with the modification.
4. An estimate of regulated emissions under the proposed modification.
5. The air cleaning devices that will be employed to address each contaminant source.
6. The expected construction schedule.
7. An acknowledgement by the permittee that the actual air contaminant sources may not be operated in a manner that alters the permitted emissions until a modified permit is obtained.
8. An acknowledgement that any construction of an air contaminant source prior to the receipt of a modified operation permit will be performed at the permittee's own risk.
9. A certification under oath of the accuracy of the notice of construction or modification.

Review and Determination by the EMC:

Following receipt of a notice of construction, the EMC may review the information contained in the notice, investigate the site or facility, and comment on the proposed facility. If the EMC determines that there is a significant likelihood that a person or permittee will not qualify for a permit or modified permit,

the EMC may request in writing that the person submit specific additional information. Upon review of the additional information, if the EMC determines that there continues to be a significant likelihood that a person or permittee would not qualify for a permit, the EMC may request that the plans be altered or may order that construction cease until the EMC issues a permit or permit modification that authorizes construction to resume.

Administrative and Judicial Review of Permit Decisions:

The bill would prohibit the use of prior financial investment, construction activity undertaken, or economic loss incurred as evidence by a person or permittee who proceeds with construction, expansion, or modification without first obtaining a permit. Under current law, a person or permittee may contest a decision based on dissatisfaction arising from any issue. The bill also directs the EMC to consider any written comment that it receives in response to the public notice.

State, EMC, and Employees Not Liable:

The State, EMC, and their employees shall not be held liable for any loss incurred by a person, permittee, or owner of a facility as a result of the enforcement of the provisions of the bill.

Federal Air Quality Programs Not Affected:

G.S. 143-215.108A would not affect a person's duty to comply with any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the Title V permitting program, nor would G.S. 143-215.108A apply if it is inconsistent with any federal requirement. The bill would also not apply to any construction or modification that is subject to the requirements for prevention of significant deterioration or federal nonattainment new source review.

Fee:

The applicant or permittee shall pay a processing fee of two hundred dollars ($200.00) at the time of notification.

Effective Date:

The bill would become effective when it becomes law and would apply to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1037 (Second Edition, amended)

SHORT TITLE: No Air Permit Requirement Until Facility Operational

SPONSOR(S):

FISCAL IMPACT

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

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

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources – Division of Air Quality; Environmental Management Commission

EFFECTIVE DATE: The bill is effective when it becomes law and applies to construction of any new facility and construction associated with the modification of a permit for an existing facility that commences on or after that date.

BILL SUMMARY: The bill modifies the procedures required before construction, expansion, modification, or operation of an air contaminant source and its components can commence. The bill establishes notification and review procedures for permit applicants, establishes a $200 application fee, and denies the use of economic and financial losses incurred by a person who proceeds without a permit as evidence during administrative and judicial review of permit decisions.

ASSUMPTIONS AND METHODOLOGY: The Division of Air Quality cannot easily estimate the number of notices of construction that will be issued under Section 3(f) of the bill. The Division normally makes 1,000 to 1,500 air quality permit decisions per year, of which 500 are renewals where no construction is needed. Thus the maximum number of persons utilizing the notice of construction powers of SB 1037 is 1,000 with resulting revenues of $200,000. However, the Division believes only a few notices will be issued because the majority of applicants will want to obtain their permits before doing any construction. The Division estimates only a few thousand dollars in fees from this new notice.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson

DATE: September 25, 2001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1037

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

S1037-ART-43 [v.1]

Date 7 August ,2002

Comm. Sub. [YES]
Amends Title [NO]
Fourth Edition

Representative Luebke

moves to amend the bill on page 6, line 29,
by inserting quotation marks at the end of that line.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1037

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1037-ART-41 [v.1]

Date 7 August ,2002

Comm. Sub. [YES]
Amends Title [NO]
Fourth Edition

Representative Hackney

moves to amend the bill on page 3, lines 8 through 12,
by deleting lines 8 through 11 and the words "requirements of this section." on line 12
and substituting:

"is peripheral to the operation of the air contaminant source, equipment, or associated air-cleaning device if the person complies with the requirements of this section. Peripheral construction includes grading, foundations, and structures not associated with an air contaminant source, equipment, or air-cleaning device." and

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1037

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1037-ART-41 [v.1]

on page 4, lines 10 through 13
by deleting lines 10 through 12 and the words "this section." on line 13 and substituting:

"under G.S. 143-215.108. A permittee may, however, construct or modify any component of the facility that is peripheral to the operation of the air contaminant source, equipment, or associated air-cleaning device if the person complies with the requirements of this section. Peripheral construction includes grading, foundations, and structures not associated with an air contaminant source, equipment, or air-cleaning device.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1037

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1037-ART-42 [v.2]

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
Fourth Edition

Representative McComas

moves to amend the bill on page 6, lines 21 through 25,
by rewriting those lines to read:

"(h) Not Applicable to Asphalt Plants. – This section shall not apply to any facility for the manufacture, sale, or distribution of asphalt. No person may construct, modify, or operate any component of any facility for the manufacture, sale, or distribution of asphalt until the person has obtained all permits that will be required for any air contaminant source, equipment, or associated air-cleaning device at the facility.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

www.BREDL.org - PO Box 88 Glendale Springs, North Carolina 28629 - Phone (336) 982-2691 - Fax (336) 982-2954 - BREDL@skybest.com

To: NC House Finance Committee
From: David Mickey and Louis Zeller
Re: NC SENATE BILL 1037 "No Air Permit Required Until Facility Operational"
Date: August 7, 2002

S1037 would undermine the public the health protections of NC Toxic Air Pollutant laws

The NC Toxic Air Pollutant (TAP) program (15A NCAC 2D .1100) is health based and requires a plant operator to comply with toxic air pollution limits at the property line of the facility. Air toxics include carcinogens such as arsenic, benzene, cadmium, and formaldehyde. Location of a plant is often determined by the TAP rules; the location of components of a facility—foundation, walls, roof, vents. etc.—may all affect pollution levels at the property line. At present, before construction begins, DAQ's air pollutant computer modeling engineers assess the impacts of wind and terrain on pollution. Structures downwind from the smokestack may cause high levels of pollution, known as the *cavitation* effect. **By allowing construction before permitting, S1037 would effectively eliminate the TAP review process and expose plant neighbors to unsafe levels of air toxins.**

S1037 would undercut air pollution reductions enacted by the General Assembly in 2002

S1037 runs counter to statewide calls for air pollution reduction and public health protection. Recent amendments to S1037—Section 3(g) version 4, "Federal Air Quality Programs Not Affected"— provide false assurances. For example, New Source Review under the federal Clean Air Act is now being rolled back by the EPA in Washington, DC. New Source Review affects permitting of new sources and modifications of existing sources. With NSR is undermined, North Carolina must rely on its own rules to protect public health from toxic air pollution. The General Assembly recently enacted its own air pollution control bill for coal-fired power plants because of the federal government's failure to do so. **The General Assembly would be giving with one hand and taking with the other if S1037 is approved.**

S1037 is at odds with existing North Carolina law.

On February 8, 2001 the NC Dept. of Justice explained the current interpretation of construction and operation under NCGS 143-215.108: *"The legislature juxtaposed the terms 'build' and 'erect' with 'use' and 'operate.' If 'build' and 'erect' were interpreted to refer to the completed act of building, there would be little if any practical difference between those terms and 'use' or 'operate.'"* (emphasis added) DOJ stated that NC Environmental Management Commission regulation 15A NCAC 2Q .0301 confirmed this distinction, adding, *"Thus, a person 'shall not begin' 'on-site fabrication, erection, [or] installation' of a source if that activity 'results in a change in emissions or affects the compliance status.' Clearly the construction of a new facility results in a 'change in emissions' from zero to some amount."* (emphasis added) **S1037 conflicts with the decision of the North Carolina Attorney General.**

Vote No on S 1037

MINUTES
HOUSE COMMITTEE ON FINANCE

August 14, 2002

The House Committee on Finance met on Thursday, August 14, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Russell Capps, Leslie Cox, Michael Decker, Andrew Dedmon, Beverly Earle, Rick Eddins, Pryor Gibson, Lyons Gray, Joe Hackney, Bill Hurley, Linda Johnson, Daniel McComas, Eugene McCombs, Edwin McMahan, Mia Morris, Art Pope, John Rayfield, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble. Staff members present were Trina Griffin, Martha Walston, Linda Millsaps, and Gerry Cohen. A Visitor Registration Sheet is attached and made a part of these minutes.

Pages serving the committee were Jason Martin, Wake County, Merriweather Baidle, Wake County, and Daniel Furlough, Wake County.

Sergeants-at-Arms serving the committee were Dusty Rhodes, Bob Fowler, Walter Spell and Matt Myers.

HOUSE BILL 1630, AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES, was before the committee. Representatives Andrew Dedmon and Wayne Goodwin, co-sponsors, came forth to explain the bill.

Rep. Womble moved that the Proposed Committee Substitute for HB 1630 be before the committee for consideration.

Rep. Goodwin said that HB 1630 added a specialty license plate for NASCAR racing teams and drivers. The Department of Motor Vehicles would issue the plate and set the fee at $30.00. The $30.00 fee was an addition to the $20.00 license registration fee. It would generate substantial revenue, estimated to be in excess of $1.5 million dollars. The revenue would go into the Specialty Plate Registration Account that paid all the expenses of specialty plates. He said that funds from the account would support seven visitors' centers, travel and tourism, highway beautification and travel accessibility for disabled persons. Race Plate Marketing would enter into a contract with the Division of Motor Vehicles to issue the plates.

Henry W. Jones, Jr., Race Plate Marketing, Ltd., said that Race Plate Marketing had the contract with NASCAR to market the plates. He explained that each team and

driver had its own logo and design. Race Plate contracted with the individual teams to get the right logos and designs and provided these to the states.

Carol Howard, Department of Motor Vehicles, expressed concerns about the plates, one being the number of plates that DMV was approving, 25 or 30 at least, and the precedent that this would establish in dealing with royalties and licensing logos. DMV wanted these issues to be worked out in the bill, rather than through an agreement.

Rep. Womble brought up issues regarding licensure, royalties, and advertisement and Rep. Hackney was concerned about setting a precedent in advertising for-profit corporations on North Carolina license plates.

Rep. Hurley wanted to know why visitors' centers on I-95 were not included in benefits from the sale of these plates and wanted an amendment to add visitors' centers on I-95 and I-85, in addition to centers on U.S. highways already addressed in current law.

Rep. Johnson commended the bill because NASCAR was currently a large revenue producer and she thought this would generate millions of dollars for the State coffers.

Jon Carr, Race Plate Marketing, Ltd., said that there would be a royalty fee paid from the sales of plates. The royalty fee would be considered an expense of producing the plate and would be paid out of the $30.00 fee.

Rep. Decker was concerned about where the royalty was being paid – the $20.00 normal plate fee or the $30.00 specialty plate fee. After Stephanie Schmidt explained that she believed it came from the $30.00, Rep. Decker recommended support of the bill.

Rep. Hackney stated that a private corporation had hired lobbyists to get the GA to have public license plates available to pay it royalties and he wanted to know how much the royalties would be. Ms. Howard answered that in checking with other states, the part that went to NASCAR and to Race Plates would be approximately 20-25% of the $30.00 fee. Rep. Hackney also said there is no distinction between this and restaurant chains and felt that the State could not distinguish between one set of businesses and another in granting legislative authority to advertise on State license plates.

Rep. Pope questioned the constitutionality under Article II, Prohibition of Local and Private Acts. He said this bill was intended for a private business. The Act was not a private or special act; therefore, he felt the bill was unconstitutional.

Rep. Allen moved that H.B. 1630 be sent to a sub-committee for further study. Rep. Luebke indicated that the co-chairs would appoint a sub-committee as soon as possible.

HOUSE BILL 1751, AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM, was on the agenda for consideration. Rep. Earle and Rep. McMahan, co-sponsors, appeared before the committee to explain the bill.

Rep. Buchanan moved that the Proposed Committee Substitute be before the committee for discussion.

Rep. Earle said that H. B. 1751 offered incentives to the North Carolina tourism industry and cited the importance of tourism to the State's economy. She felt we needed to encourage and support new projects.

Rep. McMahan also said we need to work hard to promote the tourism industry and this bill helped provide incentives for the industry. Other states do this and this bill is patterned after Kentucky.

Rep. McComas spoke of the erosion of North Carolina's tourist dollar to Virginia and South Carolina and hoped this bill would help eliminate the erosion.

Martha Walston said the purpose of the grants was to induce the creation of new or expansion or renovation of existing travel and tourism projects and she explained the application process for the grants. The three-member committee consisting of the Secretary of Revenue, Director of the Office of State Budget and Management, and the Secretary of Commerce, must review a feasibility study funded by the applicant. The grant money must only be used for capital costs and she explained the formula for determining the amount of the grant. No more than ten projects per year may be awarded grants.

Linda Millsaps said that this program essentially moved money that would be generated as State sales tax revenue. It took money from general fund sales tax and returned a portion of the money to local governments or local government/private partnerships to allow them to fund capital costs and debt service. Expenditures from this grant program, from a fiscal note basis, would show up as a loss to the State. She said the duration of the program was three years, with a maximum of thirty projects.

Chairman Luebke stated that after leaving the Finance Committee, this bill would be sent to Appropriations because it involved a question of grants.

James Hobbs, President of the N. C. Hotel & Lodging Association, Inc., spoke in favor of the bill. He said the legislation was supported by the travel and tourism industry, including the North Carolina Travel and Tourism Coalition and asked for the support of the bill.

No action was taken on the bill due to a lengthy question and answer session. Discussion on the bill was to be continued on Thursday, August 15, 2002.

There being no further business, the Chair adjourned the meeting at 9:50 A.M. to reconvene on Thursday, August 15, 2002.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

ATTACHMENTS:

Agenda
Pages and Sergeants-at-Arms
Visitor Registration Sheets

PCS for H.B. 1630
Bill Analysis for H.B. 1630
Fiscal Analysis for H.B. 1630

PCS for H.B. 1751
Bill Analysis for H.B. 1751
Fiscal Note for H.B. 1751

AGENDA

House Finance Committee

August 14, 2001
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1630 - NASCAR DRIVER THEME SPECIAL PLATE - REP. DEDMON AND GOODWIN

HB 1751 - NC TOURISM DEVELOPMENT ACT - REP. EARLE, MCMAHAN, MCCOMAS, AND BAREFOOT

ADJOURNMENT

House Pages

1. Name: Jason Martin
   County: Wake
   Sponsor: Spkr. Black
2. Name: Mewriweather Baidle
   County: Wake
   Sponsor: Pope
3. Name: Daniel Furlough
   County: Wake
   Sponsor: Black
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Dusty Rhodes
2. Name: Bud Fowler
3. Name: Walter Spell
4. Name: Matt Myers

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Guy Radford	NC DOR
Matt Lawson	Capitol Group
Elizabeth Dalton	Bone & Associates
Andy Romanet	NCLM
Chris Heagarty	NC Center for Voter Education
Willie Riddick	DOR
John Cyphers	N.C. State Grange
Bill P. Hall	Charlotte Chamber
Natalie English	Charlotte Chamber
Reynolds Bone	Bone & Assoc
Ron Aycock	County Comm. Assoc

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE — 8/14/02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mohammad Jenatian	Hospitality & Tourism Alliance Charlotte, NC
Sabra Faires	NC Dept. of Revenue
Dan Gerlach	Gov's office
Jon Carr	Jordan Price
Henry Jones	Jordan Price
Brian Francis	Meck Cnty
Alice Garland	EC
Letitia Withrow	NC StateWatch
Hal Miller	NCAECT
Charles Collins	Revenue
Andy Sabol	"
Beau Mills	NC Metro Coalition

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1630
PROPOSED COMMITTEE SUBSTITUTE H1630-PCS6479-LAf-82

Short Title: NASCAR Driver Theme Special Plates. (Public)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. A series of plates bearing an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may enter into agreements with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. Notwithstanding G.S. 66-58(b), the Division may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled

veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Racing Theme	$30.00
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway

Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Racing Theme	$30	0	0
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – The Division may require that 300 or more applications for one or more of the plates issuable in this series be received before issuing a racing theme plate in this series. The Division may develop any plate in this series without a minimum number of applications if the person providing the State with the license to use the words, logos, trademarks, or designs associated with the plate produces the plate for the State without a minimum order quantity. The cost of the racing theme special registration plate shall include the costs to produce blank plates for issuance by the

Division, as provided in any agreement with the Division authorized by G.S. 20-79.4(b)(35a)."

SECTION 5. G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title $35.00
(2) Each application for duplicate or corrected certificate of title 10.00
(3) Each application of repossessor for certificate of title 10.00
(4) Each transfer of registration 10.00
(5) Each set of replacement registration plates 10.00
(6) Each application for duplicate registration card 10.00
(7) Each application for recording supplementary lien 10.00
(8) Each application for removing a lien from a certificate of title 10.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale 10.00
(10) Each application for a salvage certificate of title made by an insurer ..... 10.00.
(11) Each set of replacement registration plates issued pursuant to G.S. 20-79.4(b)(35a)..... 25.00."

SECTION 6. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less, other than a Friends of the Great Smoky Mountains National Park special registration ~~plate,~~plate or a Racing Theme special registration plate, shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers

biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1630:
NASCAR Driver Theme Special Plates

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Dedmon and Goodwin
Date:	August 13, 2002	**Analysis by:**	Martha Walston Committee Counsel
Version:	H1630-PCS6479-Laf-82		

SUMMARY: ***The proposed committee substitute for HB 1630 authorizes the DMV to issue Racing Theme special license plates for an additional $30.00 fee. This additional fee will go to the Special Registration Plate Account. The Racing Theme replacement fee will be $25.00, instead of the usual replacement fee of $10.00. SB 1370 is a companion bill.***

CURRENT LAW: The General Assembly has authorized the Division of Motor Vehicles to issue many different registration plates. Most of these plates are not issued until at least 300 applications are received. The DMV has issued at least 87 special license plates. Applicants for the special license plates must pay the regular motor vehicle registration plate fee, and most applicants must also pay an additional fee. The additional fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this Account, $525,000 is annually appropriated to provide operating assistance for seven Visitor Centers. The Centers are located in Brunswick, Camden, Carteret, Caswell, Macon, Tyrrell, and Watauga Counties. The remaining revenue in the Account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Health and Human Services to promote travel accessibility for disabled persons in the State (17%).

BILL ANALYSIS: The proposed committee substitute for House Bill 1630 directs the DMV to issue a Racing Theme special license plate for an additional fee of $30.00. The full additional amount will go into the Special Registration Plate Account. The special plate may bear an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The DMV will not develop a plate without a license to use copyrighted or registered words, symbols, trademarks, or designs. Notwithstanding the Umstead Act, the DMV may enter into agreements with a person authorized to provide the State with such a license. The DMV may also contract for the production of blank plates in the series, provided the plates meet or exceed the State's expectations. The plate shall be designed in consultation with and approved by the person authorized to provide the license.

The DMV may require at least 300 applications before a plate in the series is issuable, or may develop the plate without the minimum number of applications if the person providing the State with the license produces the plate for the State without a minimum order quantity. The cost of the special plate shall include all costs to produce blank plates.

The cost for a replacement Racing Theme special plate shall be $25.00. The general replacement application fee is $10.00.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: August 13, 2002

TO: Representatives Dedmon and Goodwin

FROM: Stephanie Schmitt, Richard Bostic
Fiscal Research Division

RE: HB 1630 PCS - NASCAR Driver Theme Special Plates

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Highway Fund					
-Special Registration Plate Account		*See Assumptions and Methodology*			
-Replacement Fee		*See Assumptions and Methodology*			
EXPENDITURES					
Highway Fund					
Special Registration Plate Account		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a series of plates with themes of the National Association of Stock Car Auto Racing (NASCAR). The DMV may enter into agreements with any person authorized to provide

the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The DMV may also contract for the production of blank plates in this series, provided the plates meet or exceed the State's specifications. The NASCAR license plate will not be a "First in Flight" plate.

ASSUMPTIONS AND METHODOLOGY:

Highway Fund – Special Registration Plate Account

In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a NASCAR themed plate pays $30 that is deposited into the Special Registration Plate Account.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. The proposed legislation would allow the DMV to contract out the production of the special plates. It is not known how much such a contract would cost compared to internal production, but costs can be expected to increase due to NASCAR royalties of up to $7.50 for each plate (25% of the extra $30 cost).

According to Race Plates Marketing, LLC, a leading source for NASCAR driver license plates, and Motor Vehicle departments across various states, there are approximately 5 states that currently allow registered NASCAR special plates on licensed vehicles. West Virginia, as the first state to add NASCAR special plates, issued 4,053 plates in its first year with special registration fees of $65 for one year and $120 for two years. WV now estimates it has issued over 16,000 special NASCAR plates. Alternatively, Alabama was unable to reach the minimum number of orders required to begin issuing NASCAR plates, thus the implementation plans ceased in May 2002. South Carolina, Mississippi and Virginia have recently passed NASCAR special plate legislation and are beginning to make plans for issuing the plates. Many more states allow designer collector's plates to be made with their state name or insignia.

Because there is no way of knowing how many North Carolina citizens will apply for the plate, no accurate fiscal estimate is possible on either the revenue or expenditure side of this piece of the legislation.

Replacement Fee

Section 5 of the bill adds a $25 fee for each set of replacement registration plates issued under the revised statute. The replacement registration fee for a standard plate is $10. Currently, the DMV replaces less than 1% of plates annually; however, the NASCAR special plates might be more susceptible to theft and loss. It is not possible to estimate how many plates will need replacement.

SOURCES OF DATA: NC Division of Motor Vehicles; WV Division of Motor Vehicles

TECHNICAL CONSIDERATIONS:

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT No Action Taken

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1630 DATE _____

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

COMMITTEE SUBSTITUTE PCS6479-Lef-82

Rep.) Hill
)
Sen.)

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by adding the following immediately befre the period:

"A RETIRED DMV OFFICER SPECIAL REGISTRATION PLATE";

and on page 1, lines 25 and 26, by adding the following between those lines to read:

"(36a1) Retired DMV Officer.— Issuable to an officer who has retired from the North Carolina Division of Motor Vehicles. The plate shall bear the phrase "DMV Retired".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1751
PROPOSED COMMITTEE SUBSTITUTE H1751-CSLA-80 [v.7]

8/13/2002 6:35:13 PM

Short Title: NC Tourism Development Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

(a) Program Established. – There is established the Travel and Tourism Capital Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee established in subsection (c) of this section may award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. The Committee shall develop guidelines to be used in determining whether the conditions in this section are satisfied and whether the project described in the application is consistent with the grant program.

(b) Owner Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, the owner of a qualified project is the unit of local government that will own the qualified project in whole or in an equal partnership with a private individual or entity.

(c) Committee. – The Travel and Tourism Grant Committee shall consist of the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. The Committee may act only upon a unanimous decision of its members. It is unlawful for a member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any project that was awarded a grant under this section while the former member was serving on the Committee. Violation of this subsection is a Class 1 misdemeanor. Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records

governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

(d) Application and Fee. – The owner of a qualified project may apply for a grant no later than one year after the qualified project is opened to the public. When filing an application under this section, the taxpayer must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this subsection among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited. The application must contain all information required by the Committee, including a certification of the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use the grant funds. If the tourism project is the result of a public-private partnership, the grant application must set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement. The application must be signed by the finance officer and the chair of the governing body of the owner.

(e) Qualification. – A qualified project is a travel and tourism project that the Committee determines, pursuant to a feasibility study under this section, meets all of the following conditions:

(1) At least half of the project will be financed and owned by a unit of local government in which it is located.

(2) The project will target at least thirty-five percent (35%) of its visitors from among persons who reside outside the State or more than 100 miles from the project.

(3) The project has a business plan that demonstrates a positive economic impact.

(4) The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.

(5) The project will have a significant and positive impact on the community, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.

(6) The applicant has provided a cost-benefit analysis of the project.

(7) The applicant has provided an economic impact analysis demonstrating the employment, gross state product, and personal income effects of the project over a 10-year period.

(8) The project will be available to the public for a minimum of 100 days per year.

(9) The project will generate at least 10 new jobs in the local area.

(10) The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000

3 and 4	$10,000,000
5	$20,000,000

(f) Feasibility Study. – The applicant must fund a feasibility study coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(g) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected by the State each year:

(1) The net State sales tax collected on sales by or within the qualified project, as identified to the Department of Revenue.

(2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as identified to the Department of Revenue.

(h) Maximums. – The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

Enterprise Tier	**Percentage**
1 and 2	35
3 and 4	30
5	25

(i) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(j) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (f) of this section. These reports must be made at the times and in the form prescribed by the Department of Revenue. Each report must include the name, address, and tax identification number of every taxpayer whose collections are included in the report and any other information required by the Department of Revenue.

The Department of Revenue must disburse grants awarded under this section in accordance with G.S. 105-269.16. Upon awarding a grant under this section, the Committee must provide the following information to the Department of Revenue:

(1) The name, address, and other identifying information of the owner to whom the grant was awarded.

(2) The address and other identifying information of each facility that is part of the qualified project for which the grant was awarded.

(3) The applicable percentage and the maximum cumulative amount of the grant as determined in accordance with this section.

(4) Any other information included in the application, if required by the Department of Revenue.

(k) Reports. – The Committee must report annually to the Revenue Laws Study Committee concerning the applications made for grants and the grants awarded under this section.

(l) Cap - The maximum number of projects that may be awarded grants each fiscal year is ten."

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.16. Travel and tourism grants.**

The Department must annually disburse the travel and tourism grants awarded under G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the preceding fiscal year. The amount of each grant must be calculated in accordance with G.S. 143B-434.4 based on information provided to the Department by the owner of the qualified project. If information necessary to calculate a portion of a grant is not available, the Department must disburse only that portion for which information is available. To pay for this program, the Department must draw from State sales and use tax collections under Article 5 of this Chapter an amount equal to the grant funds disbursed and the Department's costs of administering the grants. The Department must provide the Committee an annual accounting of grant funds disbursed under this section."

SECTION 3. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

....

(10) The Travel and Tourism Grant Committee in developing guidelines for the Travel and Tourism Capital Incentive Grant Program under G.S. 143B-434.4 of the General Statutes."

SECTION 4. This act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

HOUSE BILL 1751:
NC Tourism Development Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Earle, McMahan, McComas, Barefoot
Date:	August 12, 2002		
Version:	H1751-CSLA-80[v 7]	**Analysis by:**	Martha Walston Committee Counsel

BILL ANALYSIS: House Bill 1751 creates the Travel and Tourism Capital Incentive Grant Program. The act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

Grant recipient - Grants may be awarded to a unit of local government who owns a qualified project in whole or in an equal partnership with a private individual or entity.

Qualified project - A qualified project is a travel and tourism project that the Travel and Tourism Grant Committee determines, pursuant to a feasibility study, meets the following conditions.

1. At least half of the project will be financed and owned by a unit of local government in which it is located
2. The project will target at least 35% of its visitors from among persons who reside outside the State or more than 100 miles from the project.
3. The project has a business plan that demonstrates a positive economic impact.
4. The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.
5. The project will have a significant and positive impact on the community, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.
6. The applicant has provided a cost-benefit analysis of the project.
7. The applicant has provided an economic impact analysis demonstrating the employment, gross state product, and personal income effects of the project over a 10-year period.
8. The project will be available to the public for a minimum of 100 days per year.
9. The project will generate at least 10 new jobs in the local area.
10. The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

Amount of the grant - The amount of the grant is determined by multiplying the sum of the total amount of sales taxes collected on sales by or within the qualified project and the net privilege taxes paid by the qualifying project times an enterprise tier percentage, with

maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amount of the total project cost that can be funded through the program.

Use of grant proceeds. - The proceeds of the grant may be used only for capital costs, including debt service with respect to the qualified project.

Cap on number of projects - No more than 10 projects may be awarded grants each fiscal year.

Travel and Tourism Grant Committee - The Travel and Tourism Grant Committee shall consist of three members: the Secretary of Commerce, the Secretary of Revenue, and the Director of the Office of State Budget and Management. The Committee may only act upon unanimous consent. The Committee is subject to the open meetings law and the public records law. Members of the Committee are forbidden to work for a business that receives a grant under this program for at least two years after the member is no longer on the Committee.

The application for a grant must include a certification of the nature and cost of the project.

Fees. - Each applicant must pay the Committee a $5,000 application fee.

Disbursement of grants - The Department of Revenue must annually disburse the grants by October 1 for the preceding fiscal year, based on information provided to the Department by the owner of the qualified project. In order to pay for the Grant Program, the Department of Revenue will draw from State sales and use tax collections an amount equal to the grant funds disbursed and the Department's costs of administering the grants.

Exemption from rule making. - The Travel and Tourism Grant Committee is exempt from the rule making provisions under the Administrative Procedure Act when developing guidelines for the Grant Program.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1751 PCS

DRAFT

SHORT TITLE: NC Tourism Development Act

SPONSOR(S): Representatives Earle, McMahan, McComas, and Barefoot

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
Sales Tax	0	* See Assumptions and Methodology *			
EXPENDITURES					
Travel and Tourism Grant Committee	* See Assumptions and Methodology *				
Dept. of Revenue	* See Assumptions and Methodology *				
POSITIONS:					
Department of Revenue					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Travel and Tourism Grant Committee, NC Department of Revenue, and local governments.

EFFECTIVE DATE: January 1, 2003

BILL SUMMARY: The bill creates the Travel and Tourism Capital Incentive Grant program to be administered by the Travel and Tourism Grant Committee. The program offers grants to local governments who own "qualifying projects" that meet the following criteria: 1) the project is financed and owned (in whole or at least in 50% partnership) by the unit of local government in which it is located, 2) the project will target 35% or more of its visitors from at least 100 miles away or out of state, 3) the project has a business plan that indicates that project will be profitable, 4) the applicant provides tax impact projections, 5) the project will have a significant and positive impact on the community, 6) the project will be open at least 100 days per year, 7) the project will generate at least ten new jobs in the local area, and 8) the projects will meet a minimum cost criteria based on the North Carolina enterprise tier in which it is located. The grant amount is determined by multiplying the total amount of sales taxes collected on sales by or within the qualified program and the net privilege taxes paid by the qualifying project by an enterprise tier based percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum

amounts of the total project cost that can be funded through this grant program. The Travel and Tourism Grant Committee is charged with determining if all project criteria are met and the percentages used to calculate the grant amount. Grant funds can only be used for capital costs, including debt service. To receive a grant disbursement, the project owner must provide the Department of Revenue with periodic, verified accounting of the tax collections. Annual disbursements based on this information must be made by the Department of Revenue by October 1 of each year and should reflect tax collections from that project for the previous fiscal year. The Department is only required to distribute funds based on data provided by the owner. If appropriate data is not provided to justify a complete payment, a partial payment can be made to reflect the information provided. Applicants must fund a feasibility study coordinated and directed by the Travel and Tourism Grant Committee and pay a $5,000 application fee. The funds to pay for the grants and the associated departmental costs are drawn from State sales and use tax revenues. The grant application period for the bill sunsets July 1, 2005, although payments for grants authorized before that date will continue to be made. Only ten (10) grants can be awarded per year.

ASSUMPTIONS AND METHODOLOGY:

Impact on Revenue

The bill effectively earmarks a proportion of state tax revenue drawn from a particular qualifying project and returns that funding to the institution to fund capital costs and debt service. The proportion returned varies by location and other factors. The bill would allow funding for ten projects a year, with a maximum of thirty grants awarded before the July 1, 2005 sunset. At present Fiscal Research is aware of several potential projects that have already reach the planning stages, primarily arenas and convention centers, that could easily qualify for these grants, although local government officials indicate that many local units would likely be interested applying for these grants. Fiscal Research is also not aware of any other state that uses a similar funding mechanism, so no data is available from other states to suggest a fiscal cost. Analysts involved in one of the largest potential projects suggest that their project alone could result in a $5 - $10 million annual grant award, based on their estimated revenues and tier designation. Because there is no good data on the type, size and location of qualifying projects or potentially qualifying projects, no fiscal estimate on this portion of the bill is possible. Because all economic activity, in total, is considered in determining the state's baseline revenue projections, all grants awarded under this program would be shown as a loss of state revenue. Depending on the number of projects that qualify for the program, the loss could be substantial, as there is no cap on the revenue invested in the program, or it could be more limited if few facilities are created or participate. However, none of that loss would appear in FY 2002-03, as the first payment would not be made for any project until October 2003.

Impact on Expenditures

Travel and Tourism Grant Committee: The bill charges the Travel and Tourism Grant Committee (the Committee) with carrying out the following activities in order to administer the grant program:

1. Adopt rules for the administration of the program.

2. Coordinate and direct feasibility studies funded by the applicants. This coordination function includes selection by the Department of qualified, independent consultants and prescription of the scope of each study.

3. Analyze applications to ensure they contain all necessary information regarding the nature and cost of the proposed tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use grant funds.

Each of these activities will involve a cost to the Committee. The bill allows the Committee itself to determine how the fee revenue and associated responsibilities will be distributed. Since the bill does not specify the financial structure of the Committee, how the Committee will operate, or how the Committee will utilize the $5,000 fee per application, it is not possible to estimate the fiscal impact on the Committee.

Department of Revenue: According to the Department of Revenue, the anticipated responsibilities from the enactment of the bill will not justify any positions being assigned to handle the work and, therefore, no employee costs will be incurred. There will only be very minimal costs for printing and mailings of forms and possibly some other minor administrative costs. The Department's assumption is that there will be a relatively small number of projects that will qualify, at least initially. Therefore, on the basis of this assumption, taxes eligible for grants will not be generated until a project is completed and business performed in the project. The first fiscal year for which grants could be issued would most likely be FY 2003-2004. This should provide the department with ample time to get procedures in place.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps, Adam Levinson, and Michele Nelson

APPROVED BY:
DATE: August 13, 2002

MINUTES
HOUSE COMMITTEE ON FINANCE

August 15, 2002

The House Committee on Finance met on Thursday, August 15, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Russell Capps, Pete Cunningham, Michael Decker, Andrew Dedmon, Rick Eddins, Pryor Gibson, Lyons Gray, Joe Hackney, Hugh Holliman, Bill Hurley, Daniel McComas, Eugene McCombs, Edwin McMahan, Mia Morris, Art Pope, John Rayfield, Jennifer Weiss, Shelly Willingham, Constance Wilson, and Larry Womble. Staff members present were Martha Walston, Richard Bostic, David Crotts, Linda Millsaps, Martha Harris and George Givens. A Visitor Registration Sheet is attached and made a part of these minutes.

Pages serving the committee were Crystal Sanders, Wake County; Monica Hodges, Wake County; Jenna Smith, Wake County; Tobatha Rains, Johnston County, and Caitlin Sexton, Johnston County.

Sergeants-at-Arms serving the committee were Dusty Rhodes, Bob Fowler, Walter Spell and Matt Myers.

SENATE BILL 1253, AN ACT TO PROVIDE THAT CERTAIN ANIMAL WASTE MANAGEMENT SYSTEMS SHALL NOT QUALIFY FOR SPECIAL PROPERTY CLASSIFICATION AND EXCLUSION FROM THE TAX BASE PURSUANT TO G.S. 105-275(8) AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY ISSUES RELATED TO THE TAX EXCLUSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION, was before the committee for discussion. Rep. Pryor Gibson, co-sponsor, explained that the bill was recommended by the Environmental Review Commission and concerned an issue between waste systems which are exempt versus waste systems that should not be exempt.

George Givens, Research Division, reported that this bill was in Finance because it was primarily a tax matter. The bill would exclude certain animal waste management systems from qualifying for special property classification and exclusion from the tax base. The Environmental Management Commission must certify that a particular property was used for pollution abatement or waste disposal, but the local tax assessor would determine if it met the exclusivity requirement. Mr. Givens said the Revenue Laws Study Committee has been directed to study issues related to the tax exclusion and bring back a recommendation at a later time. He also said that the Revenue Laws Study

Committee would need to examine and consider modification to the original broad language to reduce incentives after the technology becomes commonplace.

Rep. Decker stated that this credit was instituted in 1967 and wanted to know how many farmers had availed themselves of the credit.

John Bailey, Director of the Property Tax Division, Department of Revenue, answered Rep. Decker's question by saying that currently, to their knowledge, there were no taxpayers who were receiving the exemption.

Rep. Capps questioned that if none were receiving the credit now, are we making it possible that they can apply for credit? Mr. Bailey stated that lagoon and spray fields once were considered high technology, but now they are commonplace. The tax credits that were put in place in 1967 are outdated. This was an update of that language to ascertain that we attain leading-edge technology as a result of waste disposal.

Rep. Buchanan moved that the bill be given a favorable report. Vote was taken and it was given a favorable report.

* * * * * * * * *

Chairman Luebke recognized and thanked Stephanie Schmidt for her work on the committee this summer as a research assistant.

* * * * * * * *

HOUSE BILL 1751, AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM, was before the committee for consideration.

Rep. Buchanan moved for adoption of the Proposed Committee Substitute for consideration.

The bill had been before the committee on August 14 and was carried over to today's meeting.

Rep. McMahan, co-sponsor of the bill, explained that the committee substitute had been perfected and Martha Walston further explained the changes to the committee substitute.

Considerable debate was heard on various issues, including the composition of the Travel and Tourism Grant Committee, a constitutional question regarding the procedure for delegation of funds, maximum amount of grants to specific projects, concerns over large projects receiving the majority of the funds, concerns about how bond agencies view the bill, the use of the $5,000 application fee, and suggestions that the Treasurer's Office be heard.

Rep. Pope moved that the bill be referred to the Revenue Laws Study Commission to look at the mechanism and constitutionally of the bill and how to frame it.

Chairman Luebke felt that the committee was divided on this issue. He directed the bill sponsors to meet and try to respond to some of the questions and attempt to move it forward later with some input from the State Treasurer.

Rep. Pope withdrew his motion and it was decided to carry the bill over to a later date.

* * * * * * *

Chairman Luebke announced the Sub-Committee members for House Bill 1630, AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES, as follows: Rep. Wainwright, Chairman; Cox, Hackney, Jarrell and Johnson.

Also, Chairman Luebke announced that Will Smith's internship with Rep. Buchanan, ended today and thanked him for his service to the Finance Committee.

There being no further business, the Chair adjourned the meeting at 9:50 A.M.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

ATTACHMENTS:

Agenda
Visitor Registration Sheets

Committee Report for S.B. 1253
Committee Substitute for S.B. 1253

Committee Substitute for H.B. 1751
Handout for H.B. 1751

AGENDA

House Finance Committee

August 15, 2001
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

SB 1253 – AMEND POLLUTION ABATEMENT TAX EXCLUSION – SEN. ODOM, REP. GIBSON

HB 1751 - NC TOURISM DEVELOPMENT ACT - REP. EARLE, MCMAHAN, MCCOMAS, AND BAREFOOT

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE — 8-15-02

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Letitia Withrow	NC StateWatch
Guy Ralford	NC DOR
Andy Sabol	NC DOR
Stewart Dickinson	NC-DOC
John Bair	NC-DOR
Preston Howard	NCIC
Jim Hobbs	NCHLA
Jim	NCRA
Beau Mills	NCM
Leslie Bwacqua	NCCBI
Kim Carlton	NC BTC

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE
Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carole Lauver	EGHS
Kim Hibbard	NCLM
Katherine Joyce	Electric Cooperatives
Sori Schmidt	NC Justice Center

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1253 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CERTAIN ANIMAL WASTE MANAGEMENT SYSTEMS SHALL NOT QUALIFY FOR SPECIAL PROPERTY CLASSIFICATION AND EXCLUSION FROM THE TAX BASE PURSUANT TO G.S. 105-275(8) AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY ISSUES RELATED TO THE TAX EXCLUSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 2

SENATE BILL 1253

Finance Committee Substitute Adopted 7/24/02

Short Title: Amend Pollution Abatement Tax Exclusion. (Public)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN ANIMAL WASTE MANAGEMENT SYSTEMS SHALL NOT QUALIFY FOR SPECIAL PROPERTY CLASSIFICATION AND EXCLUSION FROM THE TAX BASE PURSUANT TO G.S. 105-275(8) AND TO DIRECT THE REVENUE LAWS STUDY COMMITTEE TO STUDY ISSUES RELATED TO THE TAX EXCLUSION, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-275(8) is amended by adding a new sub-subdivision to read:

"a1. Sub-subdivision a. of this subdivision shall not apply to an animal waste management system, as defined in G.S. 143-215.10B, unless the Environmental Management Commission determines that the animal waste management system will accomplish all of the following:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
2. Substantially eliminate atmospheric emissions of ammonia.
3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the farm is located.
4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater."

SECTION 2. The Revenue Laws Study Committee shall study issues related to the application of G.S. 105-275(8). The Committee shall consider whether the tax

exclusion should be limited to real or personal property that is subject to or is part of a facility that is subject to an individual permit issued by the Environmental Management Commission. The Committee shall also consider whether the tax exclusion should be phased out for certain types of real or personal property. In conducting this study, the Committee shall consult with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities. The Committee shall report its findings and recommendations, including legislative proposals, if any, to the 2003 General Assembly.

SECTION 3. This act is effective when it becomes law. Section 1 of this act applies to taxes imposed for taxable years beginning on or after July 1, 2002.

SENATE BILL 1253:
Amend Pollution Abatement Tax Exclusion.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Odom
Date:	August 15, 2002	**Summary by:**	Tim Dodge Research Assistant for Environmental Issues
Version:	2nd Edition		

SUMMARY: ***Senate Bill 1253 would exclude certain animal waste management systems from qualifying for special property classification and exclusion from the tax base, specify the criteria that the Environmental Management Commission (EMC) can use for certification and exemption of an animal waste management system from property taxes, and direct the Revenue Laws Study Committee to study issues related to the tax exclusion.***

CURRENT LAW: G.S. 105-275 identifies classes of property that are excluded from the tax base. G.S. 105-275(8)a. excludes real and personal property used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character). The EMC may certify property for exclusion if the EMC finds that the property satisfies all statutory requirements for exclusion.

G.S. 143-215.10B defines animal waste management systems as a combination of structures and nonstructural practices serving a feedlot that provide for the collection, treatment, storage, or land application of animal waste. The General Assembly established a statewide moratorium on the issuance of permits for the construction of lagoons and animal waste management systems for swine farms in 1997 (S.L. 1997-458) and extended the moratorium in 1998 (S.L. 1998-188), 1999 (S.L. 1999-329), and 2001 (S.L. 2001-254). The moratorium currently extends to September 1, 2003. Under the moratorium, the EMC may issue a permit for the construction or expansion of an animal waste management system only if it determines, after consultation with the Animal and Poultry Waste Management Center of North Carolina State University, that the animal waste management system will satisfy all of the following performance criteria:

1. Eliminate the discharge of animal waste to surface waters and groundwater through direct discharge, seepage, or runoff.
2. Substantially eliminate atmospheric emissions of ammonia.
3. Substantially eliminate the emission of odor that is detectable beyond the boundaries of the parcel or tract of land on which the farm is located.
4. Substantially eliminate the release of disease-transmitting vectors and airborne pathogens.
5. Substantially eliminate nutrient and heavy metal contamination of soil and groundwater.

BILL ANALYSIS: Senate Bill 1253 would add a new sub-subdivision to G.S. 105-275(8) that excludes animal waste management systems from certification and exemption, unless the EMC determines that the system meets the performance criteria specified in the moratorium on issuing animal waste management systems permits.

The bill would also direct the Revenue Laws Study Committee to study issues related to the tax exclusion and to report its findings and recommendations to the 2003 General Assembly.

EFFECTIVE DATE: The bill would become effective when it becomes law and would apply to taxes imposed for taxable years beginning on or after July 1, 2002.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1253 (First Edition)

SHORT TITLE: Amend Pollution Abatement Tax Exclusion

SPONSOR(S): Senator Odom

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Local Governments			*See Assumptions and Methodology*		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments

EFFECTIVE DATE: The act is effective when it becomes law. Section 1 of the act applies to taxes imposed for taxable years beginning on or after July 1, 2002.

BILL SUMMARY: The proposed legislation excludes certain animal waste management systems from qualifying for special property classification and exclusion from the tax base. The new section specifies the criteria on which the Environmental Management Commission can exempt an animal waste management system from property taxes. The bill also directs the Revenue Laws Study Committee to study issues related to the tax exclusion, as recommended by the Environmental Review Commission.

ASSUMPTIONS AND METHODOLOGY: The bill would affect revenue from the property tax base in each county in the state. The state General Fund would not be affected.

Under current law, property tax exclusions are granted for real and personal property that is used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water. The new section would require animal waste management systems to meet the requirements laid out by the Environmental Management Commission (EMC) to qualify for such an exemption. Although requests are received, few county assessors are currently approving the property tax exclusion for facilities. However, if the proposed legislation were enacted, the counties would again realize property tax revenues from a portion of the facilities that are now receiving an exemption. It is not possible to estimate how many exclusions would continue to be granted under the new law until the EMC inspects each facility. **Thus, no estimate is available**

for the potential property tax revenues gained from the bill; however, it is expected to be small.

If the proposed legislation were not enacted, the potential revenue losses would be split among the counties based on the number of animal waste management systems maintained in each county. Again, it is not possible to estimate the number of exclusions under current law granted by the EMC in the future; however, a base estimate on county revenue losses can be determined by looking at the property tax base of the facilities. The most recent records from the Division of Water Quality of the Department of Environment and Natural Resources list a total of 2,276 swine facilities in the state. Those counties with higher concentrations of these facilities would experience the most impact. For example, 59% of all the swine facilities are located in five counties in North Carolina: Duplin, Sampson, Wayne, Bladen, and Greene. The total number of poultry facilities is estimated to be 4,557. The top five counties in chicken production are: Iredell, Union, Randolph, Nash, and Alexander. The top five counties in turkey production are: Sampson, Duplin, Wayne, Onslow, and Union. The number of facilities is expected to remain constant. These counties would experience substantial revenue losses from a property tax exclusion on these facilities.

The Department of Revenue Property Tax Division analyzed the property value of the state's swine and poultry facilities. It was estimated that each swine facility required approximately 50 acres valued at $1200 per acre for waste storage and disposal. The total value of the land was increased to include the amount of possible exemptions from personal property and real property improvements, based on copies of applications filed for pollution abatement exemptions. The estimated property tax revenue loss for each county was calculated using the 2001 property tax rate and a $.05 fire district tax for each county. The top five potential losses that could be experienced by counties each fiscal year are listed in the table below.

County	# of Swine Facilities	Total Property Value	Total Taxes
Duplin	512	$209,920,000	$1,584,896
Sampson	452	$185,320,000	$1,436,230
Wayne	145	$59,450,000	$416,150
Bladen	134	$54,940,000	$490,340
Greene	104	$42,640,000	$383,760
Total	**1,347**	**$552,270,000**	**$4,311,376**
State Total	**2,276**	**$933,160,000**	**$7,379,139**

The number of acres per poultry facility was estimated to be 30, also valued at $1200 per acre. The same methodology used to calculate property tax revenues for swine facilities was used to estimate the property tax revenue loss in the state (no breakdown by county is available.) The total number of poultry facilities in the state is estimated to be 4,557 with a total property value of $346,332,000. The total estimated property tax revenue loss statewide could be approximately $2.6 million per fiscal year. **The potential revenue losses statewide could total approximately $9.9 million per fiscal year.**

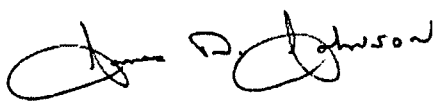
SOURCES OF DATA: David Baker, NC Department of Revenue Property Tax Division; Dennis Ramsey, Division of Water Quality of the Department of Environment and Natural Resources

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Stephanie Schmitt, Research Assistant & Linda Millsaps

APPROVED BY: James D. Johnson



DATE: July 22, 2002

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1751
PROPOSED COMMITTEE SUBSTITUTE H1751-CSLAf-83 [v.1]

8/14/2002 6:46:28 PM

Short Title: NC Tourism Development Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

(a) Program Established. – There is established the Travel and Tourism Capital Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee established in subsection (c) of this section may award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. Grant proceeds may not be distributed to any private individual or entity. The Committee shall develop guidelines to be used in determining whether the conditions in this section are satisfied and whether the project described in the application is consistent with the grant program.

(b) Owner Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, the owner of a qualified project is the unit of local government that will own the qualified project in whole or in an equal partnership with a private individual or entity.

(c) Unit of Local Government Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, a unit of local government means a county or municipality in the State.

(d) Committee. – The Travel and Tourism Grant Committee shall consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two elected local government officials. One elected local government official shall represent the Mountains and shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. One elected local government official shall represent the Coastal Plain and shall be

appointed by the General Assembly upon the recommendation of the President Pro Tem of the Senate. Neither elected local government official shall be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The General Assembly appointees shall serve two-year terms. The Committee may act only upon a unanimous decision of its members.

It is unlawful for a member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any project that was awarded a grant under this section while the former member was serving on the Committee, or to provide services for compensation to any person or entity that contracts with the project. Violation of this subsection is a Class 1 misdemeanor.

Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

(e) Application and Fee. – The owner of a qualified project may apply for a grant no later than one year after the qualified project is opened to the public. When filing an application under this section, the taxpayer must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this subsection among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

The application must contain all information required by the Committee, including a certification of the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use the grant funds. If the tourism project is the result of a public-private partnership, the grant application must set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement. The application must be signed by the finance officer and the chair of the governing body of the owner.

(f) Qualification. – A qualified project is a travel and tourism project that the Committee determines, pursuant to a feasibility study under this section, meets all of the following conditions:

(1) At least half of the project will be financed and owned by a unit of local government in which it is located.

(2) The project will target at least thirty-five percent (35%) of its visitors from among persons who reside outside the State or more than 100 miles from the project.

(3) The project has a business plan that demonstrates a positive economic impact.

(4) The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.

(5) The project will have a significant and positive impact on the community, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.

(6) The applicant has provided a cost-benefit analysis of the project.

(7) The applicant has provided an economic impact analysis demonstrating the employment, gross state product, and personal income effects of the project over a 10-year period.

(8) The project will be available to the public for a minimum of 100 days per year.

(9) The project will generate at least 10 new jobs in the local area.

(10) The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	Minimum Cost
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

(11) The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

(12) The applicant has demonstrated by clear and convincing evidence all of the following:

a. The project will not result in unnecessary duplication of existing services.

b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

(g) Feasibility Study. – The applicant must fund a feasibility study coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(h) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected by the State each year:

(1) The net State sales tax collected on sales by or within the qualified project, as identified to the Department of Revenue.

(2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as identified to the Department of Revenue.

(i) Maximums. – The maximum term of a grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which

the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

Enterprise Tier	Percentage
1 and 2	35
3 and 4	30
5	25

(j) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(k) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (f) of this section. These reports must be made at the times and in the form prescribed by the Department of Revenue. Each report must include the name, address, and tax identification number of every taxpayer whose collections are included in the report and any other information required by the Department of Revenue.

The Department of Revenue must disburse grants awarded under this section in accordance with G.S. 105-269.16. Upon awarding a grant under this section, the Committee must provide the following information to the Department of Revenue:

(1) The name, address, and other identifying information of the owner to whom the grant was awarded.

(2) The name and address of any lessee or individual or entity who has entered into a contract with the qualified project.

(3) The address and other identifying information of each facility that is part of the qualified project for which the grant was awarded.

(4) The applicable percentage and the maximum cumulative amount of the grant as determined in accordance with this section.

(5) Any other information included in the application, if required by the Department of Revenue.

(l) Reports. – The Committee must report annually to the Revenue Laws Study Committee concerning the applications made for grants and the grants awarded under this section.

(m) Cap - The maximum number of projects that may be awarded grants each fiscal year is ten."

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.16. Travel and tourism grants.**

The Department must annually disburse the travel and tourism grants awarded under G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the preceding fiscal year. The amount of each grant must be calculated in accordance with G.S. 143B-434.4 based on information provided to the Department by the owner of the qualified project. If information necessary to calculate a portion of a grant is not available, the Department must disburse only that portion for which information is available. To pay for this program, the Department must draw from State sales and use

tax collections under Article 5 of this Chapter an amount equal to the grant funds disbursed and the Department's costs of administering the grants. The Department must provide the Committee an annual accounting of grant funds disbursed under this section."

SECTION 3. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

....

(10) The Travel and Tourism Grant Committee in developing guidelines for the Travel and Tourism Capital Incentive Grant Program under G.S. 143B-434.4 of the General Statutes."

SECTION 4. This act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

HOUSE BILL 1751:
NC Tourism Development Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Earle, McMahan, McComas, and Barefoot
Date:	August 15, 2002		
Version:	H1751-CSLAf-83	**Analysis by:**	Martha Walston Committee Counsel

BILL ANALYSIS: House Bill 1751 creates the Travel and Tourism Capital Incentive Grant Program. The act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005. The underlined language is new language added to the earlier proposed committee substitute discussed by the Finance Committee.

Grant recipient - Grants may be awarded to a unit of local government that owns a qualified project in whole or in an equal partnership with a private individual or entity. Grant proceeds may not be distributed to any private individual or entity. A "unit of local government" is defined in the bill as a county or municipality in the State.

Qualified project - A qualified project is a travel and tourism project that the Travel and Tourism Grant Committee determines, pursuant to a feasibility study funded by the applicant, meets the following conditions.

1. At least half of the project will be financed and owned by a unit of local government in which it is located
2. The project will target at least 35% of its visitors from among persons who reside outside the State or more than 100 miles from the project.
3. The project has a business plan that demonstrates a positive economic impact.
4. The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.
5. The project will have a significant and positive impact on the community, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.
6. The applicant has provided a cost-benefit analysis of the project.
7. The applicant has provided an economic impact analysis demonstrating the employment, gross state product, and personal income effects of the project over a 10-year period.
8. The project will be available to the public for a minimum of 100 days per year.
9. The project will generate at least 10 new jobs in the local area.
10. The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	Minimum Cost
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

11. The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

12. The applicant has demonstrated by clear and convincing evidence all of the following
    a. The project will not result in unnecessary duplication of existing services.
    b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

Amount of the grant - The amount of the grant is determined by multiplying the sum of the total amount of sales taxes collected on sales by or within the qualified project and the net privilege taxes paid by the qualifying project times an enterprise tier percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amount of the total project cost that can be funded through the program.

Maximum. – The maximum term of the grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

Use of grant proceeds. - The proceeds of the grant may be used only for capital costs, including debt service with respect to the qualified project.

Cap on number of projects - No more than 10 projects may be awarded grants each fiscal year.

Travel and Tourism Grant Committee - The Travel and Tourism Grant Committee shall consist of **five** members: the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and two elected local government officials appointed by the General Assembly who will serve two-year terms. The Speaker of the House will appoint an official who represents the Mountains, and the President Pro Tem of the Senate will appoint an official who represents the Coastal Plain. Neither elected local government official shall be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The Committee may only act upon unanimous consent. The Committee is subject to the open meetings law and the public records law. Members of the Committee are forbidden to work for a business that receives a grant under this program, or to provide services for compensation to any person or entity who contracts with the project, for at least two years after the member is no longer on the Committee.

Fees. - Each applicant must pay the Committee a $5,000 application fee.

Information provided by the Committee. Upon awarding a grant, the Committee must provide the Department of Revenue with specific information. The proposed committee substitute requires the Committee to provide the Department with the name and address of any lessee or individual or entity who has entered into a contract with the qualified project.

Disbursement of grants by the Department of Revenue - The Department of Revenue must annually disburse the grants by October 1 for the preceding fiscal year, based on information provided to the Department by the owner of the qualified project. In order to pay for the Grant

Program, the Department will draw from State sales and use tax collections an amount equal to the grant funds disbursed and the Department's costs of administering the grants.

Exemption from rule making. - The Travel and Tourism Grant Committee is exempt from the rule making provisions under the Administrative Procedure Act when developing guidelines for the Grant Program.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1751 PCS- H1751-CSLAf-83

DRAFT

SHORT TITLE: NC Tourism Development Act

SPONSOR(S): Representatives Earle, McMahan, McComas, and Barefoot

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
Sales Tax	**0**	*** See Assumptions and Methodology ***			
EXPENDITURES					
Travel and Tourism Grant Committee	*** See Assumptions and Methodology ***				
Dept. of Revenue	*** See Assumptions and Methodology ***				
POSITIONS:					
Department of Revenue					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Travel and Tourism Grant Committee, NC Department of Revenue, and local governments.

EFFECTIVE DATE: January 1, 2003

BILL SUMMARY: The bill creates the Travel and Tourism Capital Incentive Grant program to be administered by the Travel and Tourism Grant Committee. The program offers grants to counties and municipalities who own "qualifying projects" that meet the following criteria: 1) the project is financed and owned (in whole or at least in 50% partnership) by the unit of local government in which it is located, 2) the project will target 35% or more of its visitors from at least 100 miles away or out of state, 3) the project has a business plan that indicates that project will be profitable, 4) the applicant provides tax impact projections, 5) the project will have a significant and positive impact on the community, 6) the project will be open at least 100 days per year, 7) the project will generate at least ten new jobs in the local area, 8) the projects will meet a minimum cost criteria based on the North Carolina enterprise tier in which it is located, 9) the governing body of the local government passes a resolution stating the need for, positive economic impact of, and the enhanced travel and tourism opportunities created by the project, 10) the applicant demonstrates that the project will not duplicate services and will draw new visitors to the area. The grant amount is determined by multiplying the total amount of sales

taxes collected on sales by or within the qualified program and the net privilege taxes paid by the qualifying project by an enterprise tier based percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amounts of the total project cost that can be funded through this grant program. The Travel and Tourism Grant Committee is charged with determining if all project criteria are met and the percentages used to calculate the grant amount. Grant funds can only be used for capital costs, including debt service. To receive a grant disbursement, the project owner must provide the Department of Revenue with periodic, verified accounting of the tax collections. Annual disbursements based on this information must be made by the Department of Revenue by October 1 of each year and should reflect tax collections from that project for the previous fiscal year. The Department is only required to distribute funds based on data provided by the owner. If appropriate data is not provided to justify a complete payment, a partial payment can be made to reflect the information provided. Applicants must fund a feasibility study coordinated and directed by the Travel and Tourism Grant Committee and pay a $5,000 application fee. The funds to pay for the grants and the associated departmental costs are drawn from State sales and use tax revenues. The grant application period for the bill sunsets July 1, 2005, although payments for grants authorized before that date will continue to be made up to ten years after the initial award. Only ten (10) grants can be awarded per year.

ASSUMPTIONS AND METHODOLOGY:

Impact on Revenue

The bill effectively earmarks a proportion of state tax revenue drawn from a particular qualifying project and returns that funding to the institution to fund capital costs and debt service. The proportion returned varies by location and other factors. The bill would allow funding for ten projects a year, with a maximum of thirty grants awarded before the July 1, 2005 sunset. At present Fiscal Research is aware of several potential projects that have already reach the planning stages, primarily arenas, convention centers and athletic facilities, that could easily qualify for these grants, although local government officials indicate that many local units would likely be interested applying for these grants. Fiscal Research is also not aware of any other state that uses a similar funding mechanism, so no data is available from other states to suggest a fiscal cost. (Kentucky has a state sales tax incentive program for tourism development, which has funded seven (7) projects to date. However, because of substantial differences in the Kentucky plan and this bill, that state's experience can not be used as a proxy for estimating purposes). Analysts involved in one of the largest potential projects suggest that their project alone could result in a $5 - $10 million annual grant award, based on their estimated revenues and tier designation. Because there is no good data on the type, size and location of qualifying projects or potentially qualifying projects, no fiscal estimate on this portion of the bill is possible. Because all economic activity, in total, is considered in determining the state's baseline revenue projections, all grants awarded under this program would be shown as a loss of state revenue. Depending on the type of projects that qualify for the program, the loss could be substantial, as there is no cap on the revenue invested in the program, or it could be more limited if few facilities are created or participate. However, none of that loss would appear in FY 2002-03, as the first payment would not be made for any project until October 2003.

Impact on Expenditures

Travel and Tourism Grant Committee: The bill charges the Travel and Tourism Grant Committee (the Committee) with carrying out the following activities in order to administer the grant program:

1. Adopt rules for the administration of the program.

2. Coordinate and direct feasibility studies funded by the applicants. This coordination function includes selection by the Department of qualified, independent consultants and prescription of the scope of each study.

3. Analyze applications to ensure they contain all necessary information regarding the nature and cost of the proposed tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use grant funds.

Each of these activities will involve a cost to the Committee. The bill allows the Committee itself to determine how the fee revenue and associated responsibilities will be distributed. Since the bill does not specify the financial structure of the Committee, how the Committee will operate, or how the Committee will utilize the $5,000 fee per application, it is not possible to estimate the fiscal impact on the Committee.

Department of Revenue: According to the Department of Revenue, the anticipated responsibilities from the enactment of the bill will not justify any positions being assigned to handle the work and, therefore, no employee costs will be incurred. There will only be very minimal costs for printing and mailings of forms and possibly some other minor administrative costs. The Department's assumption is that there will be a relatively small number of projects that will qualify, at least initially. Therefore, on the basis of this assumption, taxes eligible for grants will not be generated until a project is completed and business performed in the project. The first fiscal year for which grants could be issued would most likely be FY 2003-2004. This should provide the department with ample time to get procedures in place.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps, Adam Levinson, and Michele Nelson

Linda Struyk Millsaps

APPROVED BY:
DATE: August 13, 2002

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Memorandum

TO: Rep. Art Pope

FROM: Linda Struyk Millsaps
Fiscal Research

DATE: August 14, 2002

SUBJ.: NC Tourism Development Act

I am writing in response to your request for several research items related to HB 1751 – NC Tourism Development Act. I hope this information is of assistance.

1. Who is the $5-$10 million grant facility mentioned in the fiscal note?

This facility is the proposed Charlotte arena. The estimated annual grant cost is provided by the City of Charlotte and the Charlotte Area Chamber of Commerce.

2. What are the other potential projects mentioned in the fiscal note?

As I read the bill, a broad array of projects could qualify for the tourism grants. These include arenas, convention centers, museums, raceways, amusement parks, shopping facilities, hotels, and golf courses to name a few. Given the range of potential projects, it is impossible to provide you with a comprehensive listing of projects that could be in the development process statewide. Conversations with the editor of Trade Week magazine, the primary trade magazine for trade shows, indicate that out the convention center in Concord has moved far along enough in the development process to reach their "radar screen". Communication with travel and tourism officials at the Department of Commerce indicate that they have no listing of potential, under development, or in progress facilities. The County Commissioners Association does not have a listing of potential facilities, although they felt certain that most if not all of their members would be interested. The list of facilities and communities that have shown an interest in this bill to myself, the bill advocates, or both, are as follows:

Ashville – Minor League Baseball
Charlotte – Afro-American Cultural Center
Charlotte – Arena
Charlotte – Minor League Baseball
Charlotte – Motor Sports Museum
Charlotte – Riverwalk

Concord – Convention Center
Durham – Performing Arts Center
Fayetteville – Minor League Baseball
Gastonia – Convention Center
Jacksonville – Convention Center
Jacksonville – Marine Museum
Raleigh – Civic Center
Wilmington – Civic Center
Wilmington - Ampatheater
Swain County – Great Smokey Mountains Railroad
Union County – Convention Center

It should be noted that this list is clearly not exhaustive and could grow quickly as existing potential projects are modified. As an example, it would not be a far stretch to allow the proposed Durham Tobacco warehouse project highlighted recently in the News and Observer to compete for this grant funding.

3. What do other states do, and what issues are raised in these areas?

For the most part Tax Increment Financing (TIF) in other states revolve primarily around local government property taxes, and attempted to eliminate urban blight. According to NCSL 48 states and the District of Columbia all authorize some version of a TIF program. Typically, local governments create and maintain special TIF districts and pledge some portion of new local revenue from businesses and projects in these revenues to fund the TIF. However, in recent years states have begun to allow local governments to commit other tax revenues as well, including local sales taxes.

The issues generally raised in areas with TIF include accountability, funding projects that may have occurred without the government subsidy, and pressure on the tax base that limits additional investment in education.

4. What is the Kentucky program?

Kentucky does appear to be the only state that has an active state sales tax credit program for tourism development (Ohio, Louisiana, and Pennsylvania has all made attempts at developing such a program. Arkansas has a program, but has reportedly attracted only one facility since their program's inception. Indiana and Missouri have active programs, but they only commit local sales tax revenues).

Kentucky offers developers the opportunity to recover 25% of their project cost, through a sales tax abatement, over a period of ten years. Eligible attractions include cultural and historic sites, recreation and entertainment facilities, areas of scenic beauty or "distinctive natural phenomena", entertainment destination centers and Kentucky crafts centers. Lodging is also eligible when the facility is built on specific types or property, includes major historic renovations, or is a part of a larger recreational facility.

A summary of the Kentucky program is attached and can be found at
http://www.state.ky.us/tour/incent.htm

5. How does H.B. 1751 differ from the Kentucky act?

H.B. 1751 differs from the Kentucky act in a number of significant ways. Major differences include:

- **Attraction requirements:** Kentucky requires that at least 25% of the attraction's visitors come from out of state. This must be verified through a feasibility study overseen by a Department selected consultant, a marketing study, and actual entrance receipts must reflect this within four (4) years of the start of the project. H.B. 1751 only requires that the owner "target" 35% of their visitors from out of state or more than 100 miles away. This is targeting will be shown in the feasibility study.

- **Economic Impact requirements:** The Kentucky program requires that the project must have a "significant and positive impact" on the state. This is verified through a feasibility study overseen by the state. The report must show that the project will generate more new state revenue and economic activity than it costs. They note that particular attention is given to the possibility of merely shifting revenues from one in state facility to another. H.B. 1751 only requires that the economic impact on the community, not the state, be considered. There is language is the bill that requires an estimate of state and local sales tax generation, and a study of how the new facility would compete directly with other tourism attractions in the area. A cost benefit analysis is also required, although the breadth of that analysis would have to be determined by the committee.

- **Types of Projects:** The Kentucky program supports several specific types of tourism developments. These include "destination centers" that are at least 200,000 square feet (or are a part of an existing attraction), are less than 40% retail, and have at least one major themed restaurant and at least 3 additional entertainment venues; "Crafts and products centers" that sell Kentucky products with at least 80% of the sales revenue coming from the sale of arts, crafts or agricultural products; and "tourism attractions" that are defined in statute. H.B. 1751 offers a much looser definition of eligible projects, and could include all of the facilities allowed in Kentucky, in addition to shopping facilities, golf courses, and a broader range of overnight accommodations.

- **Eligible Owners:** In Kentucky the funding is offered directly to the developer. In H.B. 1751, the local government unit must be the owner or at least equal partner.

- **Employment:** The Kentucky statute requires that the project "not adversely affect existing employment in the Commonwealth". H.B. 1751 requires that at least ten new jobs be created.

- **Grant payments:** In Kentucky the developer of an approved project receives 25% of project costs, regardless of location. This payment is offered for ten years, with the maximum amount ever released in one year 2.5% of project costs. H.B. 1751 varies the amount of capital cost covered, depending on location, limits the payment to ten years, but does not address maximum annual payouts.

- **"If not for this" clause:** In Kentucky developers are required to certify that "if not for this incentive" the project would not happen. No similar clause is included in the House proposal.

- **Grant Amounts**: In Kentucky the amount of the grant/refund is limited to 25% of the project cost. No specific limitation is placed on the sales tax generated to grant amount ratio. H.B. 1751 limits the grant by both the proportion of project costs that can be covered and the proportion of sales tax revenue that can be returned.

- **Consultants:** In Kentucky the state selects one consultant, through an RFP process, to handle all feasibility studies. They have used the same consultant, C.H. Johnson Consulting in Chicago, for the entire program. The state is considered the client, although the developer must pay for the study. H.B. 1751 allows the applicant to select a consultant from a list of approved consultants. The committee is charged with coordinating the study.

The statutes governing the Kentucky program are attached and can be found at http://www.lrc.state.ky.us/KRS/148-00/CHAPTER.HTM . The specific statutes related to this program are at .850 - .859. The rules relating to this program are also attached and can be found at http://www.lrc.state.ky.us/kar/300/002/010.htm .

6. What are Kentucky's results?

The program's director reports that they are currently funding $400 million in development through seven (7) grants. Their largest project was the development of speedway in a very remote area. They are currently paying out approximately $5 million annually. The director feels that the program has been successful in that it has generated development in areas that would otherwise not see development, and generated new development to the state. He feels that the "but for this incentive" clause, strong consultant reports, the net positive fiscal impact to the state requirements, the specific list of attractions to be funded, the board mix, and the 2.5% annual payment cap have all combined to make the program successful.

As a final note, the program director mentioned that their Department of Revenue found it difficult to determine how much sales tax was actually generated in the facility, as the vendors were often part of a larger corporation. Our Department of Revenue has mentioned the same auditing concerns. However, once this problem surfaced in Kentucky they began to require that the establishments within the facility get a separate tax id number. This has greatly improved their ability to see how effective the program has been.

House Committee on Finance

Minutes
August 20, 2002

The House Committee on Finance met on Tuesday, August 20, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Buchanan, Luebke and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Hackney, Holliman, Hurley, Johnson, McComas, McCombs, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, and Cunningham. The following Sergeant-at-Arms staff were present: Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included: Trina Griffin, Martha Walston, Richard Bostic, Bill Gilkinson, and Jerry Cohen, and Committee Assistants Nancy Brantley, Blinda Edwards, and Joyce Harris. The Visitor Registration Sheet and Agenda are attached and incorporated as a part of these minutes.

Chairman Buchanan called the meeting to order and recognized Representative Culpepper to explain SB 1054, A BILL TO BE ENTITLED AN ACT TO REFORM THE METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES AND TO ESTABLISH A FAIR ELECTIONS FUND THAT PROVIDES CANDIDATES FOR THESE OFFICES WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS. By motion of Representative Womble, the Proposed Committee Substitute (PCS) was adopted for discussion.

Representative Culpepper was recognized. He explained that the Bill would change the election of Court of Appeals and Supreme Court candidates from partisan to non-partisan and would lower the contribution limit for all judicial candidates from $4,000 to $1,000. He explained that the Bill is intended to be full public financing in the general election for those candidates, and the chief funding mechanisms would be a voluntary $50 contribution requested from lawyers at the time they pay their privilege license tax and a $1 "reverse check-off" on individual State income tax forms. Under the "reverse check-off," $1 of a taxpayer's tax liability would be designated to the Fund rather than to the State's General Fund unless the taxpayer made the decision to mark "Against" on the tax form.

Representative Culpepper noted that there were conditions for participation. Beginning in 2004, general election candidates for these judgeships can receive a set amount of public funding if they voluntarily meet those conditions that are set out in the Bill.

Former Senator Robert Morgan, who heads a non-profit foundation set up to attempt to better educate the public and improve public elections, spoke in favor of the Bill. He

distributed a handout in which were listed 1,000 attorneys and judges who support judicial campaign reform

Replying to questions posed by the Committee members, Deputy Director of Revenue Sabra Faires reported that her department objected to certain aspects of the bill, particularly legislation dictating what language should be on State tax forms. She said that most of her department's concerns are reflected in the Fiscal Note on the Bill. Staff attorney Bill Gilkeson explained the Fiscal Note and answered questions posed by the members.

Amendment No. 1. After a lengthy discussion concerning the "reverse check-off," which would designate $1 of the taxpayer's liability to the Fund rather than the State's General Fund unless the taxpayer made the decision to mark "Against" on the tax form, Rep. Pope was recognized to send forth an amendment, which would amend the Bill on page 11, lines 42-44 and page 12, lines 1-8. By Roll Call Vote, the Amendment failed 17 to 13. A copy of the Amendment is attached as part of these minutes.

Amendment No. 2. Rep. Blust then put forward an amendment that would delete line 34 on page 12 through page 22, line 32; and on page 22, lines 40-41 by deleting the sentence that begins on line 40; and on page 1, lines 2-3, by rewriting the lines to read: "AN ACT TO ESTABLISH A FAIR." A copy of the proposed Amendment is attached as part of these minutes.

Because of time constraints, Chairman Buchanan announced that the Amendment would be left pending until the PCS on SB 1054 was discussed at the next meeting of the Finance Committee. He adjourned the meeting at 9:50 A.M.

Respectfully submitted,

Charles F. Buchanan
Representative Charles F. Buchanan
Presiding Chair

Nancy G. Brantley
Nancy G. Brantley
Committee Assistant

Attachments:

PCS for SB 1054
Visitor Registration Sheet

AGENDA

House Finance Committee

August 20, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1054 **JUDICIAL CAMPAIGN REFORM ACT – Sen. Gully and Representative Culpepper**

ADJOURNMENT

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 20, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	ACE
Nancy Pomeranz	NCDOR
Greg Ralph	NCDOR
Gary D. Bartlett	SBOE
Ken Westbrook	SBOE
[illegible]	[illegible]
Carrie H. Bolton	Democracy South
Bob Hall	Democracy South
Michelle Frazier	NC Bar Ass'n
Sabra Faires	NC Dept. of Revenue
Steve Worthan	NC Farm Bureau
[illegible]	[illegible]
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 20, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Heagarty	NC Center for Voter Ed.
Christine Wease on	NC Ctr for Voter Ed
Jesse Rutledge	NC Center for Voter Ed.
DAVID BARNES	Poyner & Spruill
Letitia Wotherow	NC State Watch
Kim Harrell	NC Common Cause
Beth Messersmith	Democracy South
Adam Sotak	Democracy South
George I. Allison	Democracy South
Robert Mauger	NCCVE (Voter Education)
John McHugh	Gov office

VISITOR REGISTRATION SHEET

FINANCE — AUGUST 20, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Taylor	NCATA
ERIN BYRD	NCNCE
PEG Chapin	LWV
Pricey Harrison	Board of NC
Andy Romanet	NCCM
R. Paul Wilms	NCMBA
Steve Mitchell	NOVARTIS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1054

Judiciary I Committee Substitute Adopted 9/10/01
Finance Committee Substitute Adopted 11/13/01
House Committee Substitute Favorable 7/29/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1054-CSRR-73 [v.8]

8/19/2002 7:31:52 PM

Short Title: Judicial Campaign Reform Act. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REFORM THE METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES AND TO ESTABLISH A FAIR ELECTIONS FUND THAT PROVIDES CANDIDATES FOR THESE OFFICES WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22D.

"The North Carolina Fair Elections Fund.

"**§ 163-278.61. Purpose of the North Carolina Fair Elections Fund.**

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections. The potential for corruption and its appearance is especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Fair Elections Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter.

"**§ 163-278.62. Definitions.**

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.
(3) Certified candidate. – A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.64(c).
(4) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.
(5) Contribution. – Defined in G.S. 163-278.6.
(6) Expenditure. – Defined in G.S. 163-278.6.
(7) Fund. – The North Carolina Fair Elections Fund established in G.S. 163-278.63.
(8) Independent expenditure. – Defined in G.S. 163-278.6.
(9) Maximum qualifying contributions. – An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.
(10) Minimum qualifying contributions. – An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.
(11) Nonparticipating candidate. – A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).
(12) Office. – A position on the North Carolina Court of Appeals or North Carolina Supreme Court.
(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.
(14) Political committee. – Defined in G.S. 163-278.6.
(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's committee that meets both of the following conditions:
a. Made by any registered voter in this State.
b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.
(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.
(17) Referendum committee. – Defined in G.S. 163-278.6.
(18) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4).

"**§ 163-278.63. North Carolina Fair Elections Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Fair Elections Fund is

established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Fair Elections Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) Any contributions made by attorneys in accordance with G.S. 105-41.

(4) Fair Elections Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Fair Elections Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Fair Elections Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(c) Determination of Fund Amount. – By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Fair Elections Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election.

"**§ 163-278.64. Requirements for participation; certification of candidates.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Except for candidates described elsewhere in this subsection, participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but

that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9). Candidates who hold office on the Supreme Court or Court of Appeals and candidates who were elected to the Supreme Court or Court of Appeals within four years of the beginning of the qualifying period are deemed to have demonstrated support and are not required to comply with the previous sentence of this subsection.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements, if they apply to that candidate:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Qualified to receive votes on the ballot as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support. Candidates not required to obtain a minimum number of qualifying donations shall submit a record of any qualifying contributions received at the time they request certification according to procedures set forth by the Board.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fair Elections Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions and personal and family contributions permitted by subdivision (4) of this subsection.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate

receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fair Elections Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.65. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified

candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding.

"**§ 163-278.66. Reporting requirements.**

(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.67. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an

opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures reported in accordance with G.S. 163-278.66 of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4).

"**§ 163-278.68. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Fair Elections Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Fair Elections Fund. – There is established under the Board the Advisory Council for the Fair Elections Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Fair Elections Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees,

two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of rescue money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies, withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Fair Elections Fund.

(e) Report to the Public. – The Advisory Council for the Fair Elections Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of 'independent expenditures.'

"**§ 163-278.69. Voter education.**

(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Fair Elections Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the primary and no more than 28 days nor fewer than seven days before the general election.

(b) Candidate Information. – The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: 'Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Fair Elections Fund, and any other information relevant to your candidacy. We will correct incidental errors of spelling, grammar, and punctuation which might prejudice the candidate's statement unfairly or confuse voters. We will make no changes to the content of any statement which would alter the meaning or substance of the statement. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language.'

"**§ 163-278.70. Civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a

candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control."

SECTION 2. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) The potential for corruption and its appearance resulting from campaign contributions is especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, the following provisions shall apply with respect to candidates for justice of the Supreme Court, judge of the Court of Appeals, judge of the Superior Court, and judge of the District Court:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate for justice of the Supreme Court or judge of the Court of Appeals shall accept, and no contributor shall make to that candidate, a

contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, 'candidate' is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 3. G.S. 105-41(a)(1) reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

(1) An attorney-at-law. In addition to the tax, whenever an attorney pays the tax, the Department shall ask that attorney to make a contribution of fifty dollars ($50.00) to support the Fair Elections Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.

...."

SECTION 4. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-159.2. Designation of tax to North Carolina Fair Elections Fund.**

(a) Allocation to the North Carolina Fair Elections Fund. – One dollar ($1.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount shall be allocated to the North Carolina Fair Elections Fund established in Article 22D of Chapter 163 of the General Statutes, unless the taxpayer indicates an objection to the allocation on the income tax return in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual shall have the option of objecting to the allocation. The amounts allocated under this subsection to the Fund shall be credited to it on a quarterly basis.

(b) Form. – Individual income tax returns shall include a place for the designation of one dollar ($1.00) to the North Carolina Fair Elections Fund with two options given to the taxpayer: 'For' and 'Against,' and the following statement: 'One dollar will go to the North Carolina Fair Elections Fund to support a nonpartisan court

system, unless you fill in the circle labeled "Against." Your tax remains the same regardless of which circle you choose.' A paid preparer of tax returns shall not choose one of the two options for a taxpayer without the taxpayer's consent. Every software package used in preparing North Carolina income tax returns shall default to the option 'For' on that question, if it uses a default, allowing the taxpayer to change the default response if desired. The Department of Revenue shall notify every person applying to have a software package approved for use in preparing North Carolina income tax returns of the requirement of the previous sentence.

(c) Instructions. – Individual income tax returns shall include in their instructions an explanatory statement for the designation described in subsection (b) of this section which shall read: 'The North Carolina Fair Elections Fund provides campaign money to candidates for the North Carolina Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. One dollar ($1.00) from the taxes you pay will go to the Fund unless you fill in the circle marked "Against." Regardless of what choice you make, your tax will not increase, nor will any refund you are entitled to be reduced.' The exact wording of this statement or the statement specified in subsection (b) of this section may be modified if the new wording does not change the statement's essential meaning and is approved by the State Board of Elections and the Advisory Council for the Fair Elections Fund."

SECTION 5. Article 22C of Chapter 163 of the General Statutes is repealed.

SECTION 6.(a) G.S. 105-269.6 is repealed.

SECTION 6.(b) In order to pay for its costs for the 2002-2003 fiscal year of programming, design, printing, and other expenses associated with implementing this act, the Secretary of Revenue may draw funds not to exceed one hundred seventy-eight thousand six hundred dollars ($178,600) from contributions made under G.S. 105-269.6 prior to its repeal by this section. After drawing those funds, the Secretary of Revenue shall transfer immediately to the North Carolina Fair Elections Fund any remaining funds that were contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its repeal by this section. Funds the Secretary of Revenue withdraws but then determines are not needed shall also be transferred to the North Carolina Fair Elections Fund.

SECTION 7. Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF APPELLATE, ~~SUPERIOR~~ SUPERIOR, AND DISTRICT COURT JUDGES.

"Article 25.

"Nomination and Election of Appellate, ~~Superior~~ Superior, and District Court Judges.

"§ 163-321. Applicability.

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article.

"§ 163-322. Nonpartisan primary election method.

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"§ 163-323. Notice of candidacy.

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, ____.

Signed: _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In

signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) **(Effective until January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(b) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each

county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~ the candidate seeks election. Votes cast for a candidate shall be effective only for ~~his~~ election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the

date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~The~~ If the office is Justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of Justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for Justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"§ 163-327. Vacancies of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time

to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period

for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.

Judge of the Court of Appeals.

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333:** Repealed by Session Laws 2001-398, s. 15, effective January 1, 2002.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 8. G.S. 163-106(c) reads as rewritten:

"(c) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

~~Justices of the Supreme Court, Judges of the Court of Appeals~~

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices."

SECTION 9. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ District Attorneys of the General Court of Justice ~~other than superior and district court judge~~	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)

Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees) "

SECTION 11. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

SECTION 12. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~Justices, Judges, or~~ District Attorneys of the General Court of Justice, ~~other than superior and district court judges,~~
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 13. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for ~~superior court judge~~ elections under Article 25 of this Chapter."

SECTION 14. G.S. 163-165.6(b)(3) reads as rewritten:

"(3) Partisan ~~offices~~ offices, regardless of the size of the constituency, shall be listed before nonpartisan offices."

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

SECTION 16. Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Section 4 becomes effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.

Amendment #1

(Revised 6-02)

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____

SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		✓
Allen			Weiss		✓
Blust	✓		Willingham		✓
Buchanan		✓	Wilson	✓	
Capps	✓		Womble		✓
Cox		✓			
Decker	✓				
Dedmon		✓			
Eddins	✓				
Edwards		✓			
Gibson		✓			
Gray					
Hackney (Speaker Pro Tem)		✓			
Hill	✓				
Holliman		✓			
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs	✓				
McMahan			Ex officio Members		
Morris	✓		Majority Leader Baddour		✓
Pope	✓		Majority Whip Earle		
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				
				13	17

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE Aug. 20, 2002

S. B. No. 1054 Amendment No. 1 - page 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Pope
)
Sen.)

moves to amend the bill on page 11, lines 42-44 and page 12, lines 1-8

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

" designation of one dollar ($1.00) to the North Carolina Fair Elections Fund and the following statement: 'One dollar will go to the North Carolina Fair Elections Fund to support public financing of judicial campaigns if you elect to contribute to the Fund.' ".

and on page 12, lines 16-17, by rewriting the lines to read:

" from the taxes you pay will go to the Fund. Regardless of what choice you make your tax will not increase, nor will any ".

SIGNED Rep. Pope

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____

S. B. No. 1054

COMMITTEE SUBSTITUTE ✓

DATE Aug. 20, 2002

Amendment No. 1 page 2
(to be filled in by Principal Clerk)

Rep.) Pope
)
Sen.)

moves to amend the bill on page 11, line 36-38

( ) WHICH CHANGES THE TITLE

by: established in Article 22D of Chapter 163 of the General Statutes, if the taxpayer elects to contribute to the Fund. In the case of a married couple filing a joint return, each individual may elect to contribute to the Fund. The amounts".

SIGNED Pope

ADOPTED _____ FAILED ✓ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 8/20/02

S. B. No. 1054 Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE S1054-CSRR-73

(Rep.) Blust
Sen.)

moves to amend the bill on page 12, line 34

( ) WHICH CHANGES THE TITLE

~~by~~ through page 22, line 32 by deleting the lines;

and on page 22, lines 40-41 by deleting the sentence that begins on line 40;

and on page 1, lines 2-3 by rewriting the lines to read:

"AN ACT TO ESTABLISH A FAIR"

SIGNED John M. Blust

ADOPTED _____ FAILED _____ TABLED ✓

GA-33-A

SENATE BILL 1054:
Judicial Campaign Reform Act

BILL ANALYSIS

Committee:	House Finance Committee	**Introduced by:**	Senator Gulley
Date:	August 20, 2002	**Summary by:**	Gilkeson/Cohen
Version:	S1054-CSRR-73[v.8]		Staff Attorneys

SUMMARY: Senate Bill 1054 would provide, beginning in 2004, what is intended to be full public financing in the general election for Court of Appeals and Supreme Court candidates who accept fundraising and spending limits. The chief funding mechanisms would be a voluntary $50 contribution requested from lawyers at the time they pay their privilege license tax and a $1 "reverse check-off" on individual State income tax forms. Under the "reverse check-off," $1 of a taxpayer's tax liability would be designated to the Fund rather than to the State's General Fund unless the taxpayer made the decision to mark "Against" on the tax form.

The bill would also lower the contribution limit for all judicial candidates to $1,000. In another major change to begin in 2004, Supreme Court and Court of Appeals candidates would be elected in nonpartisan primary and election method.

CONDITIONS FOR PARTICIPATION. Beginning in 2004, general election candidates for Supreme Court and Court of Appeals can receive a set amount of public funding if they voluntarily meet these conditions:

- Before filing a declaration of intent to enter the program, must not raise or spend more than $10,000 on campaign after the beginning of the year before the election. *(p. 4, lines 27-33)*
- After declaring intent to participate, raise the minimum in qualifying contributions as follows:
  1. Qualifying contributions must come in amounts between $10 and $500 each. *(p. 2, line 28)*
  2. They must come from North Carolina registered voters only. *(p. 2, line 31)*
  3. They must come from at least 350 contributors. *(p. 3, line 43)*
  4. They must be raised during the qualifying period, which begins September 1 of the year before the election and ends primary day. *(p. 2, lines 34-36)*
  5. The sum of the qualifying contributions must remain within a range pegged to a multiple of the filing fee for the office. The minimum is about $33,000 for Court of Appeals judges and the maximum is about $69,000 for Supreme Court justices. ***See Chart for details.*** Any excess contribution must be returned to the donor. *(p. 2, line 14-19 and p. 5 lines 12-14)*
- Spend only up to the qualifying contribution cap during the primary, raised from qualifying contributions and personal/family contributions (up to $1,000 per family member). *(p. 4, lines 34-41 and p. 5 lines 3-7)*
- Agree to spend only public funds and remaining qualifying donations in the general election. *(p. 4, line 42 through p.5, line 2)*

Candidates who hold office as statewide appellate judges or who were elected to the statewide appellate bench within the past 4 years are not required to raise the minimum qualifying contributions. They are deemed to have already shown that they have support. They are, however, required to abide by the spending limits and contribution limits. *(p. 4, lines 2-5)*

BENEFITS OF PARTICIPATION. If the State Board of Elections certifies a candidate as meeting these conditions, the candidate can receive from the Fair Election Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about $67,000 -- up to a total of about $135,000 in rescue funds. *(p. 6, line 42 through p. 7, line 17)*
- In the general election, an initial amount of 175% of the position's salary for Supreme Court candidates ($201,300) and 125% of the salary for Court of Appeals candidates ($137,500). *(p. 5, line 44 through p. 6, line 5)*
- In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount. *(p. 7, lines 18-21)*

OTHER PROVISIONS IN SENATE BILL 1054:

- Uses mixture of a voluntary $50 contribution requested from attorneys at the time they pay their privilege license tax, effective July 1, 2003; leftovers from Candidates Financing Fund; voluntary contributions generally; and a new $1 reverse check-off on the State individual income tax form, effective for the tax years beginning January 1, 2003. *(p. 3, lines 8-21; privilege license at p. 11, lines 17-29; reverse check-off at p. 11, line 30 through p. 12, line 21)*
- Provides a non-partisan primary and election system for election of appellate judges, the same as that now in place for Superior and District Court judges. Some cities use the same method for municipal offices. The nonpartisan primary is used to narrow the field of candidates to twice the number to be elected. (If only two candidates file, there is no contested primary.) The general election is between the candidates left after the primary. *(p. 12, line 34 through p. 22, line 32)*
- Lowers contributions limits to $1,000 for all judicial candidates. Family members may give $2,000. *(p. 10,lines 3-42)*
- Provides in primary and general election a Voter Guide on all candidates in appellate judge contests. *(p. 8, line 44, through p. 9, line 33)*
- Provides substantial rescue money to a certified candidate who is hit with spending by an opposing non-certified candidate and/or by independent-expenditure activity that exceeds the spending limit accepted by the certified candidate. *(p. 6, line 42 through p. 7, line 20)* The bill provides for expedited reporting to make the rescue provision work. *(p. 6, lines 14-30)*
- To address last-minute "surprise attack," embargos fundraising in the 21 days before Election Day by a non-certified candidate who opposes a certified candidate who has not maxed out on getting rescue money. The non-certified candidate can still add more money from personal funds. *(p. 10, line 43 through p. 11, line 16)*
- Provides a civil fine of up to $10,000 for a violation of the Article, or up to treble the amount of any financial transactions involved in the violation, whichever is greater. A

certified candidate in violation may have to give back all money received from the Fund.
(p. 9, line 34, through p. 10, line 2)

Chart – How Amounts Are Calculated in PCS for Senate Bill 1054

Office	Salary	Filing Fee *(1% of salary)*	Minimum Amount to be Raised in Qualifying Contributions *(30x filing fee)*	Maximum Amount to be Raised in Qualifying Contributions * *(60x filing fee)*	Distribution Amount – Court of Appeals # *(125x filing fee)*	Distribution Amount – Supreme Court # *(175x filing fee)*
Supreme Court **	$115,000	$1150	$34,500	$69,000 *		$201,300 #
Court of Appeals	$110,000	$1100	$33,000	$66,000 *	$137,500 #	

** Numbers slightly higher for Chief Justice.

* This is also the limit on spending during primary, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $132,000 for Court of Appeals and $138,000 for Supreme Court candidate.

This is also the limit on spending during the general election, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $275,000 for Court of Appeals to $402,600 for Supreme Court candidate.

SUMMARY OF CHANGES TO SENATE PASSED SB 1054: ***The PCS presented today makes the following changes to the bill the Senate passed last November 20:***

1. ***Nonpartisan Primary and Election.*** *It changes the method of electing Supreme Court justices and Court of Appeals judges to a nonpartisan primary and election, rather than the partisan primary and non-partisan general election that were in the Senate-passed bill. The change follows the same pattern as the election of Superior and District judges. (Pages 12-22.) It also removes from the bill the authority for the political party that nominated a candidate to spend up to 20% of the candidate's base level of public financing on a ticket campaign. (Gone from page 5 and page 10.)*

2. ***No Petition.*** *It removes the requirement that qualifying candidates must collect 2,000 names on a petition. (Gone from page 2 in the definitions and from pages 3 and 4.)*

3. ***Voter Guide During Primary.*** *It provides for distribution of the Judicial Voter Guide in the primary as well as the general election. The State Board of Elections is also given more discretion in distributing the Guide. (Page 9, lines 6-8.)*

4. ***Higher Threshold Number for Qualifying Contributors.*** *It raises from 250 to 350 the number of registered voters from whom qualifying contributions must be raised. (Page 3, line 43.)*

5. ***Higher Dollar Ceiling for Qualifying Contributions.*** *It raises the multiplier for maximum qualifying contributions from 45 to 60. (Page 2, line 15.)*

6. ***Higher Dollar Floor for Qualifying Contributions.*** *It raises the multiplier for minimum qualifying contributions from 20 to 30. (Page 2, line 18.)*

7. ***Clearer Rules for Measuring of Opposition Spending to Trigger Rescue Funds.*** *It clarifies that to calculate rescue funds, spending by the single highest-spending noncertified opposition candidate is used rather than the sum of spending by all noncertified opposition candidates. However, for independent expenditures, the sum of all such expenditures is the measure. (Page 7, lines 4-14.)*

8. ***More Specific Expedited Reporting of Opposition Money.*** *It specifies that if a non-certified candidate or independent expender reaches a money flow that triggers a 24-hour filing duty, that entity shall thereafter file a report after raising or spending every $1,000 increment. (Page 6, lines 25-30.) Senate passed S1054 required the same entities to follow an expedited reporting schedule that would have been designed by the State Board.*

9. ***Change in Contribution Limits for all Judicial Candidates.*** *It sets the contribution limit at $1,000 per donor per donee per election for all judicial candidates – Supreme Court, Court of Appeals, Superior Court, District Court. A special $2,000 limit is reserved for family members of the candidate. The Senate-passed bill set a $500 limit for appellate judge candidates only. It left the trial court judges at the standard $4,000 limit. (Page 10, lines 36-42)*

10. ***Reverse Check-off Changes.*** *It changes the wording that introduces the reverse check-off on the State Income Tax return by adding a brief description of the Fund's purpose: "to support a nonpartisan judicial system." It also adds a provision that prohibits software packages that default to "Against" on the Fund check-off. (Page 12, lines 3-8)*

11. ***Funding Wording.*** *It changes the wording of the funding, to make it clear that no money is to be spent from the General Fund, and to enable the Department of Revenue and the State Board of Elections to use the receipts of the Candidates Financing Fund more quickly. (Page 12, lines 24-33, and page 22, lines 36-42)*

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 19, 2002

TO: House Finance

FROM: Marilyn Chism and Michele Nelson
Fiscal Research Division

RE: PCS-SB 1054-CSRR-73[v.7]

The fiscal analysis for this bill begins on page 2.

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUE					
Fair Elections Fund					
Transfer from Candidates' Financing Fund	**$360,323**				
Privilege License/Voluntary Contribution		Up to $576,250 annually but see assumptions and methodology			
42.4 % Taxpayer Designation	**$0**	**$2,150,767**	**$2,150,767**	**$2,150,767**	**$2,150,767**
OR					
8.00 % Taxpayer Designation	**$0**	**$405,805**	**$405,805**	**$405,805**	**$405,805**
General Fund					
42.4 % Taxpayer Designation To Fair Elections Fund	**$0**	**($2,150,767)**	**($2,150,767)**	**($2,150,767)**	**($2,150,767)**
OR					
8.00 % Taxpayer Designation	**$0**	**($405,805)**	**($405,805)**	**($405,805)**	**($405,805)**
EXPENDITURES					
Fair Elections Fund					
Public Financing		**$680,000**	**$0**	**$1,912,800**	**$0**
State Bd. of Elections	**$37,200NR**	**$0**	**$0**	**$0**	**$0**
	$56,619	**$806,619**	**$806,619**	**$806,619**	**$806,619**
POSITIONS:		**1**	**1**	**1**	**1**
Candidates' Financing Fund					
Department of Revenue	**$178,600**	**$0**	**$0**	**$0**	**$0**

	FY 2007-08	
REVENUES		
Fair Elections Fund		
Transfer from Candidates' Financing Fund	**$0**	
Privilege License/Voluntary Contribution		Up to $576,250 annually but see assumptions and methodology
42.4% Taxpayer Designation	**$2,150,767**	
OR		
8.00 % Taxpayer Designation	**$405,805**	
General Fund		
42.4 % Taxpayer Designation to F/E Fund	**($2,150,767)**	
OR		
8.00 % Taxpayer Designation to F/E Fund	**($405,805)**	
EXPENDITURES		
Fair Elections Fund		
Public Financing	**$2,189,200**	
State Bd. of Elections	**$806,619**	
POSITIONS:	**1**	

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Elections, Department of Revenue

EFFECTIVE DATE: 2004 Elections for Supreme Court, Court of Appeals

BILL SUMMARY[1]:

Beginning in 2004, the bill would provide what is intended to be full public financing for candidates in the general election for Court of Appeals and Supreme Court who accept fundraising and spending limits. The chief funding mechanisms would be a $50 voluntary contribution requested from lawyers who pay a privilege license fee and a $1 designation on the State income tax form (unless the taxpayer says against). This bill also requires the State Board of Elections to publish and distribute a judicial voters' guide to every residence before the primary and before the general election.

[1] Adapted from Committee Counsel Summary

ASSUMPTIONS AND METHODOLOGY:

NC Fair Elections Fund.

This bill establishes the NC Fair Elections Fund (Fund) from which candidates for the Supreme Court and the Court of Appeals may choose to have their campaigns financed. If the State Board of Elections certifies a candidate to participate in public financing, the candidate can receive from the Fair Election Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about $67,000 -- up to a total of about $135,000 in rescue funds. A candidate in a second primary may receive the same amount of rescue funds for the second primary campaign.
- In the general election, an initial amount of 175% of the position's salary for Supreme Court candidates ($115,336 * 1.75 = $201,800) and 125% of the position's salary for Court of Appeals candidates ($110,530 * 1.25 = 138,200 rounded to the nearest hundred).
- In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount.

Based on the base distribution per candidate and the number of seats for the Supreme Court and the Court of Appeals that are up for election in 2004, 2006, and 2008, the amount needed to fund publicly financed campaigns for the appellate judiciary for each of those election years is noted in the table below, assuming 100% participation.

SUMMARY OF FUNDS REQUIRED FOR DISTRIBUTION TO CANDIDATES CERTIFIED TO PARTICIPATE IN PUBLICLY FINANCED CAMPAIGNS

		2004			2006			2008		
	Base	Seats	Cand.	Funding	Seats	Cand.	Funding	Seats	Cand.	Funding
Supreme Court	$201,800	1	2	$403,600	2	4	$807,200	2	4	$807,200
Court of Appeals	$138,200	1	2	$276,400	4	8	$1,105,600	5	10	$1,382,000
Total for Appellate Judiciary				**$680,000**			**$1,912,800**			**$2,189,200**

Please note that in the above calculations, no assumptions were made about how much additional public funding would be required if privately funded candidates exceeded spending limits and triggered the release of matching or "rescue" funds to publicly funded candidates. However, it should be noted that if less than 100 % of the candidates opt for public funding, the money anticipated for their campaigns, as indicated in the table above, would be available for rescue funds.

The Fiscal Research Division believes the formula is consistent with the requirements of the bill and the estimates for the amount needed for the NC Fair Elections Fund appear reasonable. The bill requires the SBE to advise the Joint Legislative Commission on Governmental Operations of the funds received and the expected needs of the Fund during the next election cycle. The first report is due before October 1, 2003 and subsequent reports are due every two years thereafter.

The bill specifies that the source of funding will be unspent NC Fair Elections Fund grants; monies transferred from the NC Candidates' Financing Fund, tax return designations of $1 from each taxpayer that does not oppose making the designation, and voluntary donations. The bill also requires that a $50 voluntary contribution for the Fund be requested from attorneys who pay the $50 privilege license.

This bill abolishes the Candidates' Financing Fund that was established by G.S. § 105-269.6. Currently, that fund has a balance of $538,923. The bill authorizes the Department of Revenue (DOR) to draw up to $178,600 from the Candidates' Financing Fund to cover its nonrecurring cost associated with this bill. The bill also directs DOR to immediately transfer the remaining balance, estimated to be $360,323, to the new NC Fair Elections Fund.

The bill provides that each taxpayer will be deemed to make a $1 designation to the Fund unless they indicate that they are against making the designation. Currently, taxpayers may designate $1 of their liability for the NC Political Parties Fund; however, in tax year 2000 only 399,566 or 8 % of the 5,072,563 individual taxpayers (including single and joint filers) chose to make the designation. Data indicates that 57.6% of the tax returns were prepared by paid preparers. It is reasonable to believe that a paid preparer will require the taxpayer to make a designation and indicate accordingly on the return (i.e., "for," "against," or "no opinion"). Based on the low number (8%) of individual taxpayers who have affirmatively designated a portion of their tax liability for the Political Parties Fund, the Fiscal Research Division (FRD) believes that those who are required to make a designation (57.6%) are likely to indicate that they are against making a designation. The remaining 42.4% who are self-preparers may indicate "for" or "no opinion" or may make no selection at all, thereby indicating their desire to designate. If only 42.4% of the 5,072,563 individual taxpayers make the designation, $2,150,767 of the tax liability will be designated for the Fair Elections Fund (5,072,563 * .424 * $1= $2,150,767). However, because of the low number of taxpayers who currently affirmatively decide to designate $1 for the Political Parties Fund and considering the expanded use of tax preparation software that will prompt self-preparers to respond to the designation questions, FRD believes that even fewer than 42.4 % will indicate "for" or "no opinion." If FRD assumes that the affect of having a "reverse check-off" designation would not be significantly different than the current affirmative check-off designation because of the use of paid preparers and tax preparation software, it is possible that only 8% would choose to make the designation. If such were the case, the tax liability designated for the Fair Elections Fund would be approximately $405,805 (5,072,563 * .08 * $1 = $405,805). We believe the number of taxpayers who would designate $1 of their tax liability to the Fund is between 42.4% and 8%. Because we have no basis of estimating that number, we have included a range of estimated revenue.

The bill provides that each attorney who is required by N.C. G.S. § 105-41 to obtain a $50 privilege license will be requested to pay an additional $50 to fund the NC Fair Elections Fund. Based on July 1, 2002 renewals and license applications, 11,525 attorneys pay the $50 privilege license fee. The NC Bar Association believes that a high percentage of the attorneys will make the $50 voluntary contribution. However, neither the NC Bar Association nor the Fiscal Research Division has a reasonable estimate of what that percentage is. If 100% of the attorneys who pay the privilege license fee choose to make the $50 contribution, the total revenue to the NC Fair Elections Fund from this source would be $576,250 annually.

Fiscal Research has no basis for estimating the amounts, if any, that will come from unspent grants from the NC Fair Elections Fund and voluntary donations.

A summary of the required funding for candidates and the estimated revenue is noted in the tables below. Based on these estimates, it appears that revenue from taxpayer designations would be sufficient to cover the cost of the elections for the Appellant Judiciary if 42.4% of the taxpayers make the designations. Cumulative revenue collections over the five-year period beginning with fiscal year 2003-2004 would be sufficient to cover the funding needed for the 2004, 2006, and 2008 elections even if only 8% of the taxpayers make the designation, assuming that 100% of the attorneys elected to make the $50 voluntary contribution.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 42.4% Designation

Election	Fiscal Year	Transfer from Candidates' FF	Taxpayer Designation	Privilege License *	Total Revenue	Required Funding
2004	2003-04	$360,323	$2,150,767	$576,250	$3,087,340	$680,000
	2004-05	$0	$2,150,767	$576,250	$2,727,017	$0
2006	2005-06	$0	$2,150,767	$576,250	$2,727,017	$1,912,800
	2006-07	$0	$2,150,767	$576,250	$2,727,017	$0
2008	2007-08	$0	$2,150,767	$576,250	$2,727,017	$2,189,200
Total		**$360,323**	**$10,753,834**	**$2,881,250**	**$13,995,408**	**$4,782,000**

* Assumes 100% election by attorneys (11,525) to pay $50 increase in privilege tax.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 8% Designation

Election	Fiscal Year	Transfer from Candidates' FF	Taxpayer Designation	Privilege License *	Total Revenue	Required Funding
2004	2003-04	$360,323	$405,805	$576,250	$1,342,378	$680,000
	2004-05	$0	$405,805	$576,250	$982,055	$0
2006	2005-06	$0	$405,805	$576,250	$982,055	$1,912,800
	2006-07	$0	$405,805	$576,250	$982,055	$0
2008	2007-08	$0	$405,805	$576,250	$982,055	$2,189,200
Total		**$360,323**	**$2,029,025**	**$2,881,250**	**$5,270,598**	**$4,782,000**

* Assumes 100% election by attorneys (11,525) to pay $50 increase in privilege tax.

Please note that the estimates assume the number of taxpayers would remain constant and there would be no change in the base level based on salary increases.

Also, Fiscal Research estimates that between 8% and 42.4% of taxpayers would designate $1 of their tax liability to the Fund. Any funds that would be designated for the Fund would normally go to the General Fund. Thus, any amount designated for the Fund would decrease General Fund availability.

Administration of the Legislation

The bill provides that the administrative and enforcement cost of the Board related to the NC Fair Elections Fund is to be a cost of the Fund. It also provides that the cost of the Department of Revenue is come from the Candidates' Financing Fund before it is abolished.

State Board of Elections:

This bill requires the State Board of Elections (SBE or Board) to administer the Judicial Campaign Reform Act (Act). The Board estimates that administration of the Act will require changes to their campaign reporting system to facilitate capture of income and expenditures by type as well as by election (i.e., primary vs. general). For example, the bill requires participating candidates to obtain qualifying contributions and it would limit the expenditure of participating candidates. The current system would have to be modified to capture the income and expenditure data. The estimated cost for modifying the system is $31,200 nonrecurring.

The Board also estimates that they will need to hire a full-time accounting employee at a grade 77 (Accountant III) to manage the fund. The minimum salary for a grade 77 position is $43,219 and the benefits total $8,400 for a total of $51,619. The nonrecurring operating cost is estimated to be $6,000 for office furniture and equipment and computer equipment.

The bill establishes a 5-member Advisory Council for the Fair Elections Fund that would be responsible for advising the Board on the rules and opinions it adopts for the enforcement and administration of this Act and the funding needs of the NC Fair Elections Fund. The Board estimates that the expenditures of the Council will include the per diem and travel cost incurred to attend meetings scheduled to accomplish its statutory responsibilities. The members will receive the legislative per diem pursuant to G.S. 120-3.1, which is currently $104 plus mileage at 29 cents per mile. Assuming the Council meets quarterly for 2 days each meeting, the estimated cost is approximately $5,000 ($104/day * 2 days for each meeting * 5 members * 4 meetings/year) including an estimate for mileage.

The bill also requires the State Board of Elections to publish and distribute a voters' guide to each residence in the state before both the primary and general elections. Per the 2000 Census, there are 3.1 million households in the state. The Board estimates that it will cost them between $750,000 and $1,500,000 to produce and distribute the guide. This would include cost for printing which is estimated to be $734,980 for 3 million copies of a 24-page guide as well as the cost for postage and for temporary help to prepare the guides for mailing or contracting with a mailing house. Because the estimate lacked sufficient detail, the Fiscal Research Division cannot determine the reasonableness of their estimate. However, based on information on the costs to other states to publish the guide, the Fiscal Research Division estimates that the guide for each election can be published and distributed to each household for no more than $750,000 for a total of not more than $1.5 million every two years for the primary and general election guides. (The state of Washington publishes and distributes approximately 3 million copies of its 48-page guide for approximately $740,000.)

In addition to the administrative cost discussed above, the Board may incur cost to hear any complaints that present themselves as a result of implementation of this bill. The Board estimates that, for each hearing held during a regularly scheduled meeting, it would incur $650

(excluding the cost of staff-time) in administrative expenses for scheduling, sending certified or special delivery of notices or subpoenas, preparing the correspondence and case file, and the cost of a court reporter. Fiscal Research believes the number of additional complaints will be minimal and therefore, has not included the cost of hearings in the fiscal impact.

The total cost to the State Board of Elections for administering the Judicial Campaign Reform Act is estimated to be $37,200 nonrecurring for modifying the campaign reporting system ($31,200) and start-up cost for additional accounting personnel ($6,000) and $56,619 recurring for the salary and benefits for the accounting personnel ($51,619) and for the meetings of the Advisory Council ($5,000). Though the bill is effective for the 2004 election of the Appellate Judiciary races, the Board is expected to determine the needs of the NC Fair Elections Fund by August 1, 2003 and to report to the Joint Legislative Commission on Governmental Operations by October 1, 2003. The Fiscal Research Division estimates that the Board would begin to prepare for the 2004 election immediately and thus, estimates that they would incur these expenditures beginning in Fiscal Year 2002-2003. Additionally, every even calendar year, the Board will incur approximately $1.5 million for publishing and distributing a judicial voters' guide before both the primary and general elections. Because the primary election usually occurs in the fiscal year that ends on June 30th of the even year and the general election occurs in the subsequent fiscal year that begins on July 1st of that even year, the cost of the voter's guide will be spread over two fiscal years. Thus, each fiscal year, the Board is expected to incur approximately $750,000 to publish the voters' guide. Please note also, that though our estimate is the same for each guide, the cost for the voters' guide for the general election is likely to be less than the cost of the guide for the primary because there will be fewer candidates for the general election.

Department of Revenue:
To comply with the directives of the legislation would require non-recurring funding to implement changes in several areas. An estimated $178,600 is needed to make modifications to the Integrated Tax Administration System (ITAS) and to revise the individual income tax forms -- D400EZ and D400. On the processing side, the Department will have to make significant changes to the privilege license tax module for ITAS to be able to process a voluntary payment and split money into separate pots. The estimated non-recurring cost of these computer changes is $137,600, which assumes contract programmer payments of $80/hour and includes all costs for requirements, design, development, testing, and changes to notices. The form will have a line for the tax and a line for the contribution. If a return is filed indicating a contribution but the payment covers only the tax, the Department will apply the payment to tax and will not notify the taxpayer of any deficiency.

Also the additions to the forms required by this legislation will impact the department's forms processing. To be able to capture the information, account for it, and report it accurately, the department estimates a cost of $36,000. A review of the tax forms indicates there is not enough space on the D400EZ or the computer generated versions of the D400 to put another block as large as the Political Parties Financing Fund block (which this would require because of the separate listings of choices for each spouse). If this were required, it would be necessary to develop three-page forms for these returns. This would result in a significant cost increase as the result of processing three pages as opposed to two for several million tax returns. At this time there is not an estimate for this revision to the tax forms. The department assumes there are

enough vacant ELF (electronic filing) fields to incorporate these changes. The last revision is the deletion of the Campaign Financing Fund check-off that will require $5,000 of processing changes.

Finally in regards to the new check-off for the North Carolina Fair Elections Fund, there are several considerations. First, this concept is contrary to the other contributions and check-offs. Those require a decision to participate. This contribution requires a decision to not participate. Second, the proposed law micromanages the tax form and requires two verbatim sentences to be repeated on the form. The last item that was mandated on the form (highlighting of information in a contrasting color) could not be carried out because forms come from software packages and from websites where the department has no control over the color. Over 70% of the forms come from software packages now. Taxpayers that use these packages do not read the form and fill it out. They answer questions posed by the computer. Printing the sentence on the form is therefore a waste of space for more than 70% of the forms.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

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FINANCE COMMITTEE - TUESDAY, AUGUST 20, 8:30 AM

SB-1054 - Judicial Campaign Reform Act

An opportunity to protect the integrity and impartiality of the state's highest courts

INSIDE: 1000 ATTORNEYS & JUDGES FOR JUDICIAL CAMPAIGN REFORM

WHAT THE BILL DOES

Essentially, the Judicial Campaign Reform Act (SB-1054) does four things:

- makes the elections of state Supreme Court and Court of Appeals nonpartisan (like Superior and District court races are now);
- gives candidates for state Supreme Court and Court of Appeals the option of public financing, if they voluntarily agree to fund-raising and spending limits;
- distributes a Voter Guide to households about the appellate court candidates; and
- lowers the contribution limits for the judicial candidates not in the public financing program to $1000 per election, from the current limit of $4000 per election.

WHY IT'S IMPORTANT

- Judicial candidates (and sitting judges) shouldn't be engaged in a chase for campaign money. The cost of these elections is climbing higher, and most of the campaign money comes from attorneys and their clients, which poses ethical problems for all involved. Spending per appellate candidate has doubled in just four years. In the current Supreme Court and Court of Appeals campaigns, two-thirds of the funds with identified donors come from attorneys and their families or from the candidates themselves.
- Judges are not supposed to promote a partisan agenda for a set of constituents; they are elected to be nonpartisan arbitrators of what the facts and the law/constitution say about a contested issue.
- A voter guide is needed to help voters know the experience and background of judicial candidates; over time, it can become an important resource, as it has in other states that use the guides.

HOW IS IT FUNDED

The public money in the Fair Elections Fund would chiefly come from two voluntary sources: (a) a $50 contribution attorneys would be asked to give when they get the invoice for their annual privilege license; (b) a $1 "reverse" check-off on the tax form, which means $1 from the state income taxes you pay would go to the Fund, unless you marked the box 'Against' – so if a person really disliked public financing they could withhold their $1 from the Fund. There is no impact on the budget for this biennium. The Fund pays all costs of the program.

WHO IS FOR IT

The current and past 12 presidents of the N.C. State Bar have all endorsed voluntary public financing for nonpartisan Supreme Court and

Court of Appeals elections. Hundreds of other attorneys and civic leaders – Democrats and Republicans – say it's a smart thing to do. So do the president of the American Bar Association (A.P. Carlton of Raleigh) and former Supreme Court justices from both parties (e.g., Burley Mitchell, Francis Parker, Jim Exum, Henry Frye). A poll by the N.C. Center for Voter Education, using a Republican pollster, found that 88% of Republican voters in N.C. favor nonpartisan elections for judges and 76% believe campaign money influences judicial decisions. The numbers are as high or higher for Democrats and Independent voters.

Support for Judicial Public Financing and Non-Partisan Elections Comes from Attorneys Who Spans the Political Sprectrum

I am alarmed at the money and influence being brought to bear on judges particularly from the plaintiff's trial bar. It has already eroded the conservative and reasonable judicial decisions that had been the backbone of our law in this state. I would prefer to see judges taken out of partisan political races. I hope that you will support this legislation, which is a step in the right direction.

■ Raleigh Attorney, Republican

As a trial attorney of 25 years' standing, let me weigh in with my two cents in favor of the Judicial Campaign Reform Act (SB-1054). Nonpartisan judicial elections and the option of public financing are essential to an independent judiciary. I have spent my professional life in courtrooms around this state, and there is nothing more comforting than to appear in front of a judge who is completely impartial, or more daunting than to argue before one who is not. This law will enhance the integrity of the law by which we are all governed. Judges have incredible power, and the slightest abuse tied to partisanship erodes public respect for the system designed to protect us all.

■ Winston-Salem Attorney, Republican

Under the current system, judges are forces to raise increasingly large amounts of money, and a large part comes from attorneys and their clients. That puts all of us in a troublesome situation and makes no sense. And what sense is there in requiring our judges to appeal to partisan constituents, when they are supposed to be nonpartisan arbiters of how our laws and constitution should be applied? We've changed to nonpartisan elections for District and Superior court judges, and we would be wise to do so for the appellate level as well.

■ Wilmington Attorney, Democrat

1000 Attorneys for Judicial Independence And A Public Financing Alternative

"We need an alternative to the money-chase that dominates so much of politics today, and we need to preserve the independence and impartiality of our state courts. We support a program that gives candidates for the state Supreme Court and Court of Appeals the option of financing their campaigns from a publicly supported Fair Elections Fund. It's a good place to begin providing an alternative to state candidates who accept strict spending and fund-raising limits."

James K. Dorsett III, Raleigh, President Elect, NC State Bar, 2002-2003
E. Fitzgerald Parnell II, Charlotte, Current President, NC State Bar, 2001-2002
Ann Reed, Raleigh, President, NC State Bar, 2000-2001
Cressie H. Thigpen Jr., Raleigh, President, NC State Bar, 1999-2000
Robert C. Sink, Charlotte, President, NC State Bar, 1998-1999
William O. King, Durham, President, NC State Bar, 1997-1998
Judge W. Erwin Spainhour, Concord, President, NC State Bar, 1996-1997
Fred H. Moody, Bryson City, President, NC State Bar, 1995-1996
Charles M. Davis, Louisburg, President, NC State Bar, 1994-1995
Robert Robinson, Asheville, President, NC State Bar, 1993-1994
Robert A. Wicker, Greensboro, President, NC State Bar, 1992-1993
John H. Vernon III, Burlington, President, NC State Bar, 1991-1992
Tommy W. Jarrett, Goldsboro, President, NC State Bar, 1990-1991

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William E. Anderson, Raleigh, McDaniel & Anderson
[illegible]erald Arnold, Cary, Sr. VP, Lawyers Mutual, Ret. Judge
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Nancy P. Quinn, Greensboro, The Quinn Law Firm
Julie P. Raines, Raleigh, NC State Univ.
Richard L. Rainey, Charlotte, Womble Carlyle Sandridge & Rice
Paul J. Raisig, Sanford, Attorney at Law
William A. Raney Jr., Wilmington, Wessell & Raney
Ronald D. Raxter, Raleigh, Maupin Taylor & Ellis
Amy E. Ray, Asheville, Attorney at Law
C. Richard Rayburn Jr., Charlotte, Rayburn Cooper & Durham
Kenneth R. Raynor, Charlotte, Templeton & Raynor
Charles R. Redden, Winston-Salem, Attorney at Law
Annie Maynette Regan, Fayetteville, Cumberland Co. Bd. of Educ.
Amy K. Reynolds, Charlotte, Kilpatrick Stockton
John M. Rich, Wake Forest, Royster Cross Currin & Rich
Diana E. Ricketts, Raleigh, Bode Call & Stroupe
Eric B. Ridenour, Sylva, Bridgers & Ridenour

Paul Ridgeway, Raleigh, Everett Gaskins Hancock & Stevens
William L. Rikard Jr., Charlotte, Parker Poe Adams & Bernstein
J. Fred Riley, Elizabeth City, Hornthal Riley Ellis & Maland
Julie A. Risher, Winston-Salem, Attorney - Local Government
Norwood Robinson, Winston-Salem, Robinson & Lawing
Peter L. Roda, Asheville, District Court Judge
Randall M. Roden, Raleigh, Tharrington Smith
Richard T. Rodgers Sr., Burgaw, The Rodgers Law Firm
Andrew Jonathan Rogers, Winston-Salem, Blanco Tackabery
F. Stephen Rogers, G'boro, Coun., Commonwealth Land Title Co.
William F. Rogers Jr., Concord, Black Rogers Ruth Grossman
Steven J. Rose, Carrboro, Attorney - Government
Theresa J. Rosenberg, Raleigh, Attorney at Law
C. Thomas Ross, Winston-Salem, Ross Law Firm
Thomas W. Ross, W-S, Former Dir., Admin. Office of the Courts
William E. Rouse Jr., Raleigh, Attorney at Law
Julius A. Rousseau Jr., N Wilkesboro, Emer. Superior Court Judge
Vicki B. Rowan, Charlotte, Attorney at Law
Douglas A. Rubel, Cary, Attorney at Law
John D. Runkle, Chapel Hill, Conservation Council of NC
A. Maxwell Ruppe, Fayetteville, Attorney at Law, Retired
John William Russell, Asheville, Russell & King
Jan H. Samet, High Point, Keziah Gates & Samet
D. Blaine Sanders, Charlotte, Robinson Bradshaw & Hinson
Robert G. Sanders, Charlotte, Attorney at Law
Jo Anne Sanford, Raleigh, Attorney at Law
Charles M. Sasser, Charlotte, Cox Gage & Sasser
Howard P. Satisky, Raleigh, Satisky & Silverstein
Donna P. Savage, Charlotte, Attorney at Law
D. T. Scarborough III, Pinehurst, Pate & Scarborough
Randall C. Scarborough, Raleigh, Attorney at Law
John C. Schafer, Cary, NC Industrial Commission
Frank L. Schrimsher, Charlotte, Lindsey & Schrimsher
J. Brian Scott, Rocky Mount, Battle Winslow Scott & Wiley
Nancy Ebert Scott, Raleigh, Assistant Attorney General
Karlene Scott-Turrentine, Raleigh, The Turrentine Group
Mark A. Scruggs, Durham, Lawyers Mutual Liability Ins.
Douglas S. Sea, Charlotte, Legal Services of Southern Piedmont
Charles H. Sedberry, Raleigh, Joslin Sedberry & Lamkin
Kurt A. Seeber, Winston-Salem, Robinson & Lawing
Steven M. Shaber, Raleigh, Poyner & Spruill
Frederick K. Sharpless, Greensboro, Sharpless & Stavola
Douglas Huston Shaver, Winston-Salem, Womble Carlyle
Gerald E. Shaw, Sanford, Retired Attorney
W. Terry Sherrill, Charlotte, Sherrill & Emehel
Robert S. Shields Jr., New Bern, Attorney at Law
David E. Shives, Winston-Salem, Bynum & Murphrey
H. Milton Short, Charlotte, Attorney at Law
Thomas M. Shuford Jr., Lincolnton, Lewis & Shuford
C. Miller Sigmon, Raleigh, The Sigmon Law Firm
John M. Silverstein, Raleigh, Satisky & Silverstein
Richard G. Singer, Raleigh, Clifton & Singer
Russell F. Sizemore, Charlotte, Kennedy Covington
Charles M. Slade Jr., Rich Square, Attorney at Law
Patrick U. Smathers, Canton, Smathers & Norwood
Cynthia G. Smith, Cary, Attorney at Law
D. Clark Smith Jr., Lexington, Brinkley Walser
D. Stuart Smith, Wrightsville Beach, Anderson Daniel & Coye
Gibson L. Smith Jr., Charlotte, Robinson Bradshaw & Hinson
Jerry A. Smith Jr., Hendersonville, Former Attorney
Kristin L. Smith, Charlotte, Dozier Miller Pollard & Murphy
Laura C. Smith, Charlotte, Robinson Bradshaw & Hinson
Norman B. Smith, Greensboro, Smith James Rowlett & Cohen
Roger T. Smith, Asheville, Attorney at Law
Kenneth D. Snow, Charlotte, Ken Harris & Associates
Samuel O. Southern, Raleigh, Smith Moore
Susan L. Sowell, Charlotte, KMZ Rosenman
Robert W. Spearman, Raleigh, Parker Poe Adams & Bernstein
J. Thomas Spiggle, Raleigh, Tharrington Smith
James (Jay) M. Spiro, Sylva, Attorney at Law
James W. Sprouse Jr., Raleigh, Vann & Sheridan
Horace E. Stacy Jr., Lumberton, Retired
Oscar E. Starnes Jr., Asheville, Van Winkle Buck Wall Starnes
Robert B. Starnes, Charlotte, McAngus Goudelock & Courie
William W. Staton, Sanford, Staton Perkinson Doster Post
Joseph M. Stavola, Greensboro, Sharpless & Stavola
Samuel S. Stephenson, Angier, District Court Judge, Retired
Rebecca L. Stevens, Cary, Attorney at Law
Marcia Stewart, Selma, District Court Judge
Robert Stiehl, Fayetteville, District Court Judge
W. Todd Stillerman, Charlotte, Mayer Brown Rowe & Maw
Ralph M. Stockton Jr., Winston-Salem, Kilpatrick Stockton
Peter B. Strickland, Angier, Assistant District Attorney
Thomas E. Strickland, Goldsboro, Shelby & Associates
Joseph E. Stroud Jr., Jacksonville, Erwin Simpson & Stroud
Steven R. Stroud, Rocky Mount, Hoyle & Stroud
M. Gray Styers Jr., Raleigh, Kilpatrick Stockton
Paul A. Suhr, Raleigh, Attorney at Law
John R. Surratt, Winston-Salem, Surratt & Thompson
Kayley H. Taber, Hillsborough, Assistant District Attorney
James M. Talley Jr., Charlotte, Horack Talley Pharr & Lowndes
Robert T. Tally, Winston-Salem, Attorney at Law
Hugh C. Talton Jr., Beaufort, Attorney at Law
John E. Tantum, Wendell, Attorney at Law
Heather Lynne Taraska, Charlotte, Assistant District Attorney
Samuel M. Tate, Morganton, District Court Judge, Recalled
Sarah L. Tate, Raleigh, Attorney at Law
David C. Taylor Jr., Fayetteville, Attorney at Law
Harmony Whalen Taylor, Charlotte, Hedrick Eatman Gardner
Kimberly S. Taylor, Hiddenite, Superior Court Judge
C. Woodrow Teague, Raleigh, Teague Campbell Dennis
Charles R. Tedder, Greensboro, Attorney at Law
Edward P. Tewkesbury, Greensboro, Tewkesbury Law Offices
Richard E. Thigpen Jr., Charlotte, Retired
Angus B. Thompson II, Lumberton, Public Defender's Office
Charles C. Thompson III, Graham, Attorney at Law
Herman G. Thompson, Southern Pines, Attorney at Law
Jack A. Thompson, Fayetteville, Superior Court Judge

Samuel G. Thompson, Raleigh, Smith Anderson
Leigh W. Thorne, Raleigh, Alston & Bird
Chad D. Tillman, Charlotte, Morris Manning & Martin
Noell P. Tin, Charlotte, Attorney at Law
[redacted]ard S. Towers, High Point, Towers Law Office
[redacted]eph C. Travis, Charlotte, Attorney at Law
Roger S. Tripp, Lexington, Biesecker Tripp Sink & Fritts
Christine O'Connor Trottier, Raleigh, Carolina Legal Assistance
James R. Turner, Greensboro, Turner Enochs & Lloyd
Joseph E. Turner, Greensboro, District Court Judge
Russell E. Twiford, Elizabeth City, Retired Attorney
Howard F. Twiggs, Raleigh, Twiggs Beskind Strickland & Rabenau
John W. Twisdale, Smithfield, Retired Attorney
Richard Tyndall, Mooresville, Attorney at Law
Charles R. Ullman, Raleigh, Charles R. Ullman & Associates
Randall A. Underwood, Greensboro, Brooks Pierce
Stephen M. Valentine, Beaufort, Wheatley Wheatly Nobles Weeks
William K. Van Allen, Charlotte, Moore & Van Allen
R. Eric Van Newkirk, Gastonia, Assistant Public Defender
Bruce W. Vanderbloemen, Lenoir, Todd Vanderbloemen Brady
Andrew A. Vanore III, Raleigh, Brown Crump Vanore & Tierney
Andrew A. Vanore Jr., Littleton, Retired Attorney
Richard L. Vanore, Greensboro, Carruthers & Roth
K. Matthew Vaughn, Raleigh, Everett Gaskins Hancock & Stevens
Denis L. Ventriglia, Wilmington, Attorney at Law
Connie J. Vetter, Charlotte, Southern Center for Law & Justice
Teresa H. Vincent, Greensboro, District Court Judge
[redacted]nald M. Von Cannon, Winston-Salem, Allman Spry Leggett
[redacted]es R. Vosburgh, Washington, Special Superior Court Judge
Lewis E. Waddell Jr., Newton, The Lewis Waddell Law Firm
Charlesena E. Walker, Durham, Assistant Appellate Defender
Clarence W. Walker, Charlotte, Kennedy Covington
Nancy E. Walker, Charlotte, Whitesides & Walker
Rufus F. Walker Jr., Hickory, The Walker Law Firm
Russell G. Walker Jr., Asheboro, Superior Court Judge
Sean C. Walker, Salisbury, Woodson Sayers Lawther
Jonathan Wall, Greensboro, Clark Bloss & Wall
J. McLain Wallace Jr., Rocky Mount, Battle Winslow Scott & Wiley
Albert F. Walser, Statesville, Attorney at Law
Jason A. Walser, Salisbury, Land Trust for Central North Carolina
Amy Pinne Wang, Reidsville, Murray Tindal Wang & Glidewell
Louis A. Waple II, Charlotte, McAngus Goudelock & Courie
James S. Warren, Wake Forest, Warren Perry & Anthony
Lindsay C. Warren Jr., Goldsboro, Retired Attorney
Robert W. Warren, Black Mountain, Attorney at Law
Benjamin R. Warrick, Clinton, Attorney at Law
E. Thomas Watson, Charlotte, Parker Poe Adams & Bernstein
John W. Watson Jr., Oxford, Attorney at Law
Kary Church Watson, Charlotte, Horack Talley Pharr & Lowndes
Rush P. Watson, Charlotte, District Attorney's Office
L. Stacy Weaver Jr., Fayetteville, McCoy Weaver Wiggins
[redacted] Webb, Raleigh, Webb & Webb
[redacted]L. Webster, Pittsboro, Attorney at Law
Gregory A. Weeks, Fayetteville, Superior Court Judge
J. Michael Weeks, Zebulon, Attorney at Law
Judson A. Welborn, Raleigh, Manning Fulton & Skinner
Wilson O. Weldon Jr., Thomasville, Lambeth McMillan & Weldon
Charles M. Welling, Charlotte, Retired
James G. Welsh Jr., Winston-Salem, Davis & Hamrick
Stanley W. West, Southern Pines, West & Smith
Thomas R. West, Raleigh, Poyner & Spruill
John R. Wester, Charlotte, Robinson Bradshaw & Hinson
Jerry S. Weston, Greensboro, Gabriel Berry & Weston
Barbara B. Weyher, Raleigh, Yates McLamb & Weyher
Parker Whedon, Charlotte, Attorney at Law
Garry Whitaker, Winston-Salem, Attorney at Law
Thomas L. White Jr., Manteo, Hornthal Riley Ellis & Maland
Henry M. Whitesides, Gastonia, Whitesides & Kenny
Neil B. Whitford, Morehead City, Kirkman Whitford & Brady
Kathleen Widelski, Kannapolis, Cabarrus Co. Dept. of Social Srvs
Arlene M. Wiegner, High Point, Wyatt Early Harris & Wheeler
Thomas A. Will Jr., Gastonia, Attorney at Law
A. Jerome Williams Jr., Wr. Beach, Sr. Appeals Referee, NC ESC
Bradford A. Williams, Raleigh, Holt York McDarris & High
D. Robert Williams Jr., Wilmington, Attorney at Law
M. Jason Williams, Greenville, Assistant Public Defender
Pamela N. Williams, Cary, Brooks Stephens & Pope
Shantrell G. Williams, Charlotte, Attorney at Law
Catherine C. Williamson, Charlotte, Attorney at Law
Amanda Lynn Wilson, Rockingham, Attorney at Law
Edwin G. Wilson Jr., Eden, Maddrey Wilson & Etringer
G. Gray Wilson, Winston-Salem, Wilson & Iseman
Harry E. Wilson, Raleigh, State Board of Education
L. Jane Wilson, Asheville, Attorney at Law, Retired
Susan E. Wilson, Weaverville, Attorney at Law
Timothy W. Wilson, Rocky Mount, Poyner & Spruill
William T. Wilson Jr., Sanford, Wilson & Reives
Victoria S. Windell, Charlotte, Moore & Van Allen
G. Chris Windham, Winston-Salem, Womble Carlyle Sandridge
Leslie J. Winner, Chapel Hill, Univ. of North Carolina, Gen.Counsel
William F. Wolcott III, Asheville, Attorney at Law
Calder W. Womble, Winston-Salem, Womble Carlyle
Fred M. Wood Jr., Charlotte, Kilpatrick Stockton
William Z. Wood Jr., Clemmons, Superior Court Judge
Sam S. Woodley, Rocky Mount, Battle Winslow Scott & Wiley
Thomas C. Worth Jr., Raleigh, Attorney at Law
Donna Michelle Wright, Greensboro, Guardian Ad Litem Program
Ernest J. Wright, Jacksonville, Attorney at Law
Roy H. Wyman Jr., Research Tri. Park, Maupin Taylor & Ellis
Samuel T. Wyrick III, Raleigh, Wyrick Robbins Yates & Ponton
P. Marshall Yoder, Charlotte, Poyner & Spruill
D. Blake Yokley, Winston-Salem, Attorney at Law
Charles R. Young Sr., Hickory, Tate Young Morphis Bach & Taylor
Thomas R. Young, Statesville, Iredell Co. Dept. of Social Services
Julia F. Youngman, Raleigh, Smith Moore
Marshall V. Yount, Hickory, Sigmon Clark Mackie Hutton

CIVIC LEADERS FOR A PUBLIC-FINANCING ALTERNATIVE

We need an alternative to the money-chase that dominates so much of politics today. We support a voluntary, public financing program for statewide judicial candidates. It's a good place to start.

Claude Abernathy, Newton, Wachovia Corp.
Kelly Alexander, Charlotte, Alexander Funeral Home
George M. Anderson, Raleigh, Attorney
William H. Baker, Knightdale, Ernst & Young
Alice Ballance, Windsor, Kiddie World Child Development
William T. Barnett, Henderson, Barnett Properties
Judy Harrison Barry, Charlotte, Florence Crittenton Services
Marshall B. Bass, Winston-Salem, Marshall B. Bass & Associates
Charles Blackmon, Durham, NC Mutual Life Insurance Company
Michael Blackwell, Thomasville, Baptist Children's Homes of N.C.
Stuart Bondurant, Chapel Hill, UNC School of Medicine
Kevin M. Brady, Sherrills Ford, Chase Manhattan Mortgage Corp.
Larry R. Brown, Mayor of Kernersville
H. David Bruton, Carthage, Physician; former Sec., Dept. of HHR
Robert F. Cabaniss, Shelby retired farmer, Cleveland Community College board
D. M. (Mac) Campbell Jr., Elizabethtown, Campbell Oil Co.
Howard B. Chapin, Washington, former state House of Rep.
Doug Copeland, Greensboro, The Business Journal
Joseph C. Coulter, Charlotte, Duke Power Company
Robert L. Crocker, Farmville, Best Value Drugs
Frank Daniels Jr., Raleigh, Southern Pine Pilot
Jack L. Dellinger, Lincolnton, New York Life insurance executive
Victor E. Euliss, Mayor of Graham
E. Reid Flinchum, Jacksonville, Onslow Inn & Conference Center
Dudley E. Flood, Durham, UNC Board of Governors
Sidney R. French Jr., Cove City, Craven County School Board
William Friday, Chapel Hill, UNC President Emeritus
Shirley T. Frye, Greensboro, WFMY-TV
D. D. Garrett, Greenville, Garrett Insurance Agency
J. Banks Garrison, Albemarle, South Central Oil Company
Tom Gilmore, Julian, Gilmore Plant & Bulb
H. Dean Gouge, Old Fort, AARP district leader
Pamela Graham-Wilson, Wallace, Wilson Family Pharmacies
Marianne B. Hayworth, High Point, NC Arts Council
Jacob T. (Tom) Hedrick Jr., Southmont, retired business owner
Richard A. Holder, Kinston, Harvey Fertilizer
Conrad H. Jenkins, Mayor of Kenansville
Jack Hunt, Lattimore, former Speaker Pro-Tem House of Rep.
Willie D. Jacobs, Clinton, Sampson Community College board
Molly Lambeth Johnson, Lexington, NC Council for Women board
Robert L. (Roddy) Jones, Raleigh, Davidson Jones Corp.
E. D. Kearney Jr., New Bern, Global Transport Authority board
Robert P. Kennel, Holly Springs, Kennel's Beach Inc.
John F. Lentz, Ellerbe, Lentz Realty and Forestry
Henry G. Lewis, Lumberton, Lewis & Lewis Accountants
Mariana T. Manning, Raleigh, Arts Society Inc.
Carol J. and Robert L. Mattocks II, New Bern, Jenkins Gas & Oil
Charles M. McKeller, Tryon, Glen Raven Mills
John O. McNairy, Kinston, Harvey Enterprises
Reba S. Moretz, Boone, Appalachian Ski Mountain Inn
Donald Morris, Mayor of Tarboro
Hugh M. Morton, Linville, Grandfather Mountain
W. M. Mullinix Sr., Richfield, retired business executive
James A. Nelson Jr., Greenville, Attorney
Twila Nelson, President of Carteret County Democratic Women
Jack Palmer Jr., Shelby, Palmer Mortuary
Amber Parker, Mayor of Bessemer City
Talmadge Penland, Asheville, Attorney
Roger Perry, Chapel Hill, East West Partners
E. Hayes Petteway, Elizabethtown, Bank of America
Jerry Plemmons, Hot Springs, French Board Electric Cooperative
Flora and B. B. Plyler Jr., Wilson, Plyler Financial Services
Edward Renfrow, Smithfield, former state Controller
Sam C. Rhyne, Mayor of Dallas
William R. Roberson Jr., Washington, former DOT Secretary
L. Stewart Rumley, Mayor of Washington
Stephen R. Satisky, Fayetteville, Phillips Loan Offices
D. T. Savage, Havelock, Northrop Grumman Technical Services
Janice Scarborough, Asheboro, Regional Consolidated Services
Henry Shaw, Fayetteville, retired banker
Thomas R. Sloan, Greensboro, Essilor/Southern Optical
Guy P. Smith, Lexington, Lexington Oldsmobile Cadillac
James E. Sponenburg III, Lenoir, Central Carolina Bank
W. M. (Mokie) Stancil, Smithfield, Stancil Oil/Stancil Inc.
William W. Staton, Sanford, Attorney
Kathy A. Taft, Greenville, State Board of Education
Lloyd P. (Jock) Tate, Southern Pines, NC State University
Zebedee Taylor, Plymouth, Roanoke Development Center
Ann T. Turlington, Clinton, Community College State Board
Frank Turnage, Mayor of Rocky Mount
Mary Upchurch, Raefort, Tar Heel Turkey Hackery
Brett J. Van Nieuwenhuise, Mayor of Elizabeth City
A. J. Walston, Wilson, Pittard Perry & Crone CPAs
Alvah H. Ward Jr., former NC Dept. of Commerce Division Director
Marvin M. Ward, Winston-Salem, former state Senator
Ernest L. Waters, Goldsboro, Waters Construction Company
Barden Winstead Jr., Rocky Mount, A. G. Edwards Inc.
Winnie Wood, Elizabeth City, F. P. Wood & Son
Smedes York, Raleigh, York Properties

House Committee on Finance

Minutes
August 21, 2002

The House Committee on Finance met on Wednesday, August 21, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Buchanan, Luebke and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Johnson, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, Baddour, Cunningham, and Earle. The following Sergeant-at-Arms staff were present: Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included: Trina Griffin, Martha Walston, Richard Bostic, Linda Millsaps, Bill Gilkeson, and Marilyn Chism; and Committee Assistants Nancy Brantley, Blinda Edwards, and Joyce Harris. The Visitor Registration Sheet and Agenda are attached and incorporated as a part of these minutes.

Chairman Buchanan announced that the first order of business would be SB 1161, A BILL TO BE ENTITLED AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES, TO CREATE A PROPERTY TAX SUBCOMMITTEE OF THE REVENUE LAWS STUDY COMMITTEE, TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES, AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS. Upon motion of Rep. Hill, the Proposed Committee Substitute for SB 1161 was adopted for discussion, and Senator Hartsell was recognized to explain the Bill.

Sen. Hartsell pointed out that the PCS contained two recommendations of the Revenue Laws Study Committee: 1) to amend the present-use value statutes to more accurately determine the realistic present-use value of agricultural land, horticultural land, and forestland for property tax purpose--these changes were given a favorable report by House Agriculture on August 20 when it considered the third edition of SB 1161, and 2) to make several changes and clarifications in the tax laws. Sen. Hartsell noted that these same changes and clarifications were earlier considered and given a favorable report by House Finance on June 13 when the Committee examined HB 1509 (a Revenue Laws recommendation sponsored by Reps. Holliman, Luebke, and Wainwright).

Upon motion of Representative Allen, the PSC was given a favorable report, which changes the title, unfavorable as to the Senate committee substitute bill. Copies of the PCS, Bill, Bill Summary and Fiscal Note are attached as part of these minutes.

The next order of business was SB 1054, A BILL TO BE ENTITLED AN ACT TO ESTABLISH A NONPARTISAN METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES BEGINNING IN 2004; TO SET $1,000 CONTRIBUTION LIMITS ($2,000 FROM FAMILY MEMBERS) FOR JUDICIAL CAMPAIGNS BEGINNING IN 2004; TO ESTABLISH A FAIR ELECTIONS FUND THAT PROVIDES APPELLATE JUDICIAL CANDIDATES WHO AGREE TO CONTRIBUTION AND EXPENDITURE RESTRICTIONS WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS BEGINNING IN 2004; TO SAFEGUARD CANDIDATES WHO OPT TO USE THAT SYSTEM BY PROHIBITING CERTAIN CONTRIBUTIONS TO THEIR OPPONENTS DURING THE 21 DAYS BEFORE AN ELECTION AND BY PROVIDING RESCUE MONEY WHEN THEY FACE LARGE EXPENDITURES BY OPPONENTS OR LARGE INDEPENDENT EXPENDITURES; TO PROVIDE A JUDICIAL VOTER GUIDE TO BE FINANCED BY THE FUND; TO PROVIDE THAT THE FUND SHALL BE ADMINISTERED BY THE STATE BOARD OF ELECTIONS ASSISTED BY AN ADVISORY COUNCIL; AND TO PROVIDE THAT THE FUND SHALL BE FINANCED BY METHODS INCLUDING A REVERSE $1 CHECK-OFF ON THE NORTH CAROLINA INCOME TAX AND A $50 CONTRIBUTION BY ATTORNEYS WHEN THEY PAY THEIR PRIVILEGE LICENSE TAX. Upon motion of Rep. Womble, the Proposed Committee Substitute was adopted for discussion. Rep. Bill Culpepper was recognized to explain the bill.

Rep. Culpepper reported that the new PCS addresses some of the concerns expressed by the Department of Revenue at the Finance meeting on August 20. Staff member Bill Gilkeson explained that the section dealing with the $1 of the individual's income tax to the Fair Elections Fund is the main item that had been changed. He said the Department of Revenue had objected to the idea that precise language inside quotation marks was prescribed to be put on the income tax form and they also had some concerns about the effect the bill would have on non-traditional ways of preparing income taxes through software packages. He explained that the re-write was done in close consultation with Deputy Secretary Sabre Faires.

The new language in the PCS was discussed, and Nancy Pomeranz with the Department of Revenue confirmed that the Department agrees with the changes that have been made; that the changes had addressed all of their objections made at yesterday's meeting of the Committee. Asked if he had any comments, Michelle Frazier with the NC Bar Association noted that the Association had not looked at that piece of legislation.

Amendment No. 1. Representative Decker sent forth an amendment that would delete the term "Fair Elections" and substitute "Public Campaign Financing" wherever it appeared in the Bill. The Amendment was adopted.

Amendment No. 2. Representative Pope sent forth an amendment that, among other changes, would delete the term "A REVERSE $1 CHECK-OFF" substituting "AN OPTION TO CONTRIBUTE." The Amendment failed by a Roll Call Vote of 17 to 12.

Amendment No. 3. Representative Pope then sent forth an amendment that would delete the sentence, "Candidates who hold office on the Supreme Court or Court of Appeals and candidates who were elected to the Supreme Court or Court of Appeals within four years of the beginning of the qualifying period are deemed to have demonstrated support and are not required to comply with the previous sentence of this subsection" on page 4, lines 17-20; and the sentence, "Candidates not required to obtain a minimum number of qualifying donations shall submit a record of any qualifying contributions received at the time they request certification according to procedures set forth by the Board," on page 4, lines 36-38. Mr. Bob Hall with *Democracy South* voiced his support of the amendment, stating that the judges of the Supreme Court or Court of Appeals have already demonstrated their viability and public trust, unlike state-level judges. Following discussion, the Amendment was adopted.

Representative Cunningham then moved for a favorable report on the Proposed Committee Substitute for SB 1054, which changes the title, unfavorable as to House Committee Substitute Bill #1. By Roll Call Vote, the Proposed Committee Substitute received a favorable report.

There being no further business to discuss, Chairman Buchanan adjourned the meeting at 10:40 A.M.

Respectfully submitted,

Representative Charles F. Buchanan
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

Senate Bills 1161 and 1054
Committee Reports
Visitor Registration Sheet

AGENDA

House Finance Committee

August 21, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1054 – JUDICIAL CAMPAIGN REFORM ACT – Sen. Gulley and Representative Culpepper

SB 1161 – AMEND USE VALUE STATUTES – Sen. Hartsell

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance — August 21, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Steve Wall	Conservation Council
Michelle Frazier	NC Bar Ass'n
Laura DeVivo	DENR
David Knight	NC Sierra Club, NC Wildlife Fed
Sabra Faires	N.C Dept. of Revenue
Pricey Harrison	Beaufort NC
John Mobley	DOU OFFICE
Bill Wilson	NCATL
Elizabeth Ouzts	NCPIRG
J Tant	NC DOR

VISITOR REGISTRATION SHEET

Finance — August 21, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Meyer	NC ACC
Steve Woodson	NC Farm Bureau
Christine Weason	NC Ctr for Voter Educ.
Jesse Rutledge	NC Ctr for Voter Ed.
Adam Sotak	Democracy South
Peter Walz	Dem Sen
Beth Messersmith	Dem South
Kiki Dunton	NCPIRG
Greg Radford	NC DOR
Eddie Erwin	NC DOR
Nancy Pomeranz	NCDOR

VISITOR REGISTRATION SHEET

Finance
Name of Committee

August 21, 2002
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Heagarty	NC Center for Voter Ed.
Bob Dusablon	STATEWATCH
Sarah Hayes	Southern Environmental Law Center
Don Wright	SBOE
Kim Westbrook	SBOE
Paul Gleiser	Caterpillar (Cat) Gov't
DAVID BARNETT	Pogue + Spruill
Alice Garland	EC
Peter Daniel	NCFB
Bill Connelly	Dept. of Rev.
John Bailey	NC DOR

Vote on SB 1054

(Revised 6-02)

ROLL CALL VOTE

____ YES ____ NO = _____(TOTAL)

HB# ____
SB# 1054

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander	✓		Wainwright	✓	
Allen	✓		Weiss	✓	
Blust			Willingham	✓	
Buchanan	✓		Wilson		✓
Capps		✓	Womble	✓	
Cox	✓				
Decker		✓			
Dedmon	✓				
Eddins		✓			
Edwards	✓				
Gibson	✓				
Gray		✓			
Hackney (Speaker Pro Tem)	✓				
Hill	✓				
Holliman					
Hurley					
Jarrell	✓				
Johnson		✓			
Luebke					
McComas					
McCombs		✓			
McMahan		✓	Ex officio Members		
Morris		✓	Majority Leader Baddour	✓	
Pope		✓	Majority Whip Earle	✓	
Rayfield		✓	Majority Whip Cunningham	✓	
Starnes		✓			

17 12

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1054

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

S1054-ARR-115 [v.2]

Date 8.21-02 ,2002

Comm. Sub. [YES]
Amends Title [YES]
S1054-CSRR-73

Representative Decker

moves to amend the bill on page 1, lines 5 and 6,
by deleting the term "FAIR ELECTIONS" and substituting "PUBLIC CAMPAIGN FINANCING"; and

in the remainder of the bill,
by deleting the term "Fair Elections" wherever it appears and substituting the term "Public Campaign Financing" and by deleting the term "Fair Elections" wherever it appears and substituting the term "Public Campaign Financing".

SIGNED Michael Decker
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Amendment No. 2

(Revised 6-02)

ROLL CALL VOTE

____ YES ____ NO = ____(TOTAL)

HB# ____
SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on ____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander		✓	Wainwright		✓
Allen		✓	Weiss		✓
Blust			Willingham		✓
Buchanan		✓	Wilson	✓	
Capps	✓		Womble		✓
Cox		✓			
Decker	✓				
Dedmon		✓			
Eddins	✓				
Edwards		✓			
Gibson		✓			
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill		✓			
Holliman					
Hurley					
Jarrell		✓			
Johnson	✓				
Luebke					
McComas					
McCombs	✓				
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour		✓
Pope	✓		Majority Whip Earle		✓
Rayfield	✓		Majority Whip Cunningham		✓
Starnes	✓				

12 17

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1054

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S1054-ARR-114 [v.3]

Date 8-21-02 ,2002

Comm. Sub. [YES]
Amends Title [YES]
S1054-CSRR-73

Representative Pope

moves to amend the bill on page 1, line 18,
by deleting the term "A REVERSE $1 CHECK-OFF" and substituting "AN OPTION TO CONTRIBUTE"; and

on page 3, line 27,
by deleting the term "105-159.2" and substituting "105-269.6A"; and

on page 12, lines 1-39,
by deleting the language on those lines and substituting the following:

"**SECTION 4.** Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

§ 105-269.6A. Contribution of individual income tax refund to ~~Fair Elections~~ Fund.

An individual entitled to a refund of income taxes under Part 2 of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Fair Elections Fund for the use of judicial campaigns as provided in Article 22D of Chapter 163 of the General Statutes. The Secretary of Revenue shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary of Revenue shall, on a quarterly basis, transmit the

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1054

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

S1054-ARR-114 [v.3]

contributions made pursuant to this section to the State Treasurer for credit to the North Carolina ~~Fair Elections~~ Fund. Any interest earned on funds so credited shall be credited to that Fund.'" Public Campaign Financing LQS

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1054

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

S1054-ARR-112 [v.2]

Date 8-21-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
S1054-CSRR-73

Representative Pope

moves to amend the bill on page 4, lines 17-20,
by deleting the sentence that begins with the word "Candidates" and ends with the word "subsection."; and

on page 4, lines 36-38,
by deleting the sentence that begins with the word "Candidates" and ends with the word "Board."

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1054

Judiciary I Committee Substitute Adopted 9/10/01
Finance Committee Substitute Adopted 11/13/01
House Committee Substitute Favorable 7/29/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1054-CSRR-73 [v.15]

8/20/2002 9:04:24 PM

Short Title: Judicial Campaign Reform Act. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NONPARTISAN METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES BEGINNING IN 2004; TO SET $1,000 CONTRIBUTION LIMITS ($2,000 FROM FAMILY MEMBERS) FOR JUDICIAL CAMPAIGNS BEGINNING IN 2004; TO ESTABLISH A FAIR ELECTIONS FUND THAT PROVIDES APPELLATE JUDICIAL CANDIDATES WHO AGREE TO CONTRIBUTION AND EXPENDITURE RESTRICTIONS WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS BEGINNING IN 2004; TO SAFEGUARD CANDIDATES WHO OPT TO USE THAT SYSTEM BY PROHIBITING CERTAIN CONTRIBUTIONS TO THEIR OPPONENTS DURING THE 21 DAYS BEFORE AN ELECTION AND BY PROVIDING RESCUE MONEY WHEN THEY FACE LARGE EXPENDITURES BY OPPONENTS OR LARGE INDEPENDENT EXPENDITURES; TO PROVIDE A JUDICIAL VOTER GUIDE TO BE FINANCED BY THE FUND; TO PROVIDE THAT THE FUND SHALL BE ADMINISTERED BY THE STATE BOARD OF ELECTIONS ASSISTED BY AN ADVISORY COUNCIL; AND TO PROVIDE THAT THE FUND SHALL BE FINANCED BY METHODS INCLUDING A REVERSE $1 CHECK-OFF ON THE NORTH CAROLINA INCOME TAX AND A $50 CONTRIBUTION BY ATTORNEYS WHEN THEY PAY THEIR PRIVILEGE LICENSE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22D.

"The North Carolina Fair Elections Fund.

"**§ 163-278.61. Purpose of the North Carolina Fair Elections Fund.**

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Fair Elections Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter.

"**§ 163-278.62. Definitions.**

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. – A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.64(c).

(4) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(5) Contribution. – Defined in G.S. 163-278.6.

(6) Expenditure. – Defined in G.S. 163-278.6.

(7) Fund. – The North Carolina Fair Elections Fund established in G.S. 163-278.63.

(8) Independent expenditure. – Defined in G.S. 163-278.6.

(9) Maximum qualifying contributions. – An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.

(10) Minimum qualifying contributions. – An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.

(11) Nonparticipating candidate. – A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).

(12) Office. – A position on the North Carolina Court of Appeals or North Carolina Supreme Court.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's

committee that meets both of the following conditions:

a. Made by any registered voter in this State.

b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.

(17) Referendum committee. – Defined in G.S. 163-278.6.

(18) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4).

"**§ 163-278.63. North Carolina Fair Elections Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Fair Elections Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Fair Elections Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) Any contributions made by attorneys in accordance with G.S. 105-41.

(4) Fair Elections Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Fair Elections Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Fair Elections Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(c) Determination of Fund Amount. – By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Fair Elections Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election.

"**§ 163-278.64. Requirements for participation; certification of candidates.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Except for candidates described elsewhere in this subsection, participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9). Candidates who hold office on the Supreme Court or Court of Appeals and candidates who were elected to the Supreme Court or Court of Appeals within four years of the beginning of the qualifying period are deemed to have demonstrated support and are not required to comply with the previous sentence of this subsection.

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements, if they apply to that candidate:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Qualified to receive votes on the ballot as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support. Candidates not required to obtain a minimum number of qualifying donations shall submit a record of any qualifying contributions received at the time they request certification according to procedures set forth by the Board.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in

amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a declaration of intent or receive funds from the Fair Elections Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions and personal and family contributions permitted by subdivision (4) of this subsection.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Fair Elections Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.65. Distribution from the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding.

"**§ 163-278.66. Reporting requirements.**

(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.67. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures reported in accordance with G.S. 163-278.66 of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4).

"**§ 163-278.68. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Fair Elections Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Fair Elections Fund. – There is established under the Board the Advisory Council for the Fair Elections Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Fair Elections Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the

greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of rescue money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies,

withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Fair Elections Fund.

(e) Report to the Public. – The Advisory Council for the Fair Elections Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of 'independent expenditures.'

"**§ 163-278.69. Voter education.**

(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Fair Elections Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the primary and no more than 28 days nor fewer than seven days before the general election.

(b) Candidate Information. – The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: 'Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Fair Elections Fund, and any other information relevant to your candidacy. We will correct incidental errors of spelling, grammar, and punctuation which might prejudice the candidate's statement unfairly or confuse voters. We will make no changes to the content of any statement which would alter the meaning

or substance of the statement. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language.'

"**§ 163-278.70. Civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control."

SECTION 2. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) The potential for corruption and its appearance resulting from campaign

contributions is especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, the following provisions shall apply with respect to candidates for justice of the Supreme Court, judge of the Court of Appeals, judge of the Superior Court, and judge of the District Court:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate for justice of the Supreme Court or judge of the Court of Appeals shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, 'candidate' is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 3. G.S. 105-41(a)(1) reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

(1) An attorney-at-law. In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars ($50.00) to support the North Carolina Fair Elections Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.

...."

SECTION 4. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-159.2. Designation of tax to North Carolina Fair Elections Fund.**

(a) Allocation to the North Carolina Fair Elections Fund. – To ensure the financial viability of the North Carolina Fair Elections Fund established in Article 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund one dollar ($1.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount, unless the individual objects. A taxpayer must be given the opportunity to indicate an objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a quarterly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to object to the allocation of one dollar ($1.00) of the individual's tax liability to the North Carolina Fair Elections Fund. The Department must make it clear to the taxpayer that the dollar will support a nonpartisan court system, that the dollar will go to the Fund if the taxpayer does not mark an objection, and that allocation of the dollar neither increases nor decreases the individual's tax liability. The following statement satisfies the intent of this requirement: 'One dollar will go to the North Carolina Fair Elections Fund to support a nonpartisan court system, unless you object. Your tax remains the same whether or not you object.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return of the requirements of this section and that a return may not reflect an objection unless the individual completing the return decided to object to the allocation after being presented with the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an objection. A paid preparer of tax returns may not mark an objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: 'The North Carolina Fair Elections Fund provides campaign money to nonpartisan candidates for the North Carolina Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. One dollar ($1.00) from the taxes you pay will go to the Fund unless you mark an objection. Regardless of what choice you make, your tax will not increase, nor will any refund you are entitled to be reduced.'"

SECTION 5. Article 22C of Chapter 163 of the General Statutes is repealed.

SECTION 6.(a) G.S. 105-269.6 is repealed.

SECTION 6.(b) In order to pay for its costs for the 2002-2003 fiscal year of programming, design, printing, and other expenses associated with implementing this act, the Secretary of Revenue may draw funds not to exceed one hundred seventy-eight

thousand six hundred dollars ($178,600) from the North Carolina Candidates Financing Fund. After drawing those funds, the Secretary of Revenue shall transfer immediately to the North Carolina Fair Elections Fund any remaining funds that were contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its repeal by this section. Funds the Secretary of Revenue withdraws but then determines are not needed shall also be transferred to the North Carolina Fair Elections Fund.

SECTION 7. Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF APPELLATE, ~~SUPERIOR~~ SUPERIOR, AND DISTRICT COURT JUDGES.

"Article 25.

"Nomination and Election of Appellate, ~~Superior~~ Superior, and District Court Judges.

"§ 163-321. Applicability.

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article.

"§ 163-322. Nonpartisan primary election method.

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections shall determine the winner by lot.

"§ 163-323. Notice of candidacy.

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, ____.

Signed: _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) **(Effective until January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(b) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~ the candidate seeks election. Votes cast for a candidate shall be effective only for ~~his~~ election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time

of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"**§ 163-324. Filing fees required of candidates; refunds.**

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"**§ 163-325. Petition in lieu of payment of filing fee.**

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~The~~ If the office is Justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"**§ 163-326. Certification of notices of candidacy.**

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of Justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for Justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"§ 163-327. Vacancies of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election

if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of Justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of Justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those

candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"§ 163-330. Voting in primary.

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"§ 163-331. Date of primary.

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"§ 163-332. Ballots.

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.

Judge of the Court of Appeals.

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"§ 163-333: Repealed by Session Laws 2001-398, s. 15, effective January 1, 2002.

"§ 163-334. Counting of ballots.

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 8. G.S. 163-106(c) reads as rewritten:

"(c) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor
Lieutenant Governor
All State executive officers
~~Justices of the Supreme Court, Judges of the Court of Appeals~~
United States Senators
Members of the House of Representatives of the United States
District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators
Members of the State House of Representatives
All county offices."

SECTION 9. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing
Governor	One percent (1%) of the annual salary of the office sought

Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ District Attorneys of the General Court of Justice ~~other than superior and district court judge~~	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly	

by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees) "

SECTION 11. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

SECTION 12. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~Justices, Judges, or~~ District Attorneys of the General Court of Justice, ~~other than superior and district court judges,~~
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and

Members of the State House of Representatives in multi-county representative districts."

SECTION 13. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for ~~superior court judge~~ elections under Article 25 of this Chapter."

SECTION 14. G.S. 163-165.6(b)(3) reads as rewritten:

"(3) Partisan ~~offices~~ offices, regardless of the size of the constituency, shall be listed before nonpartisan offices."

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

SECTION 16. Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Section 4 and 6.(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1161

Finance Committee Substitute Adopted 7/24/02
Third Edition Engrossed 7/29/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1161-PCS4760-LAx-85

Short Title: Amend Use Value Statutes and Other Tax Laws. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES, TO CREATE A PROPERTY TAX SUBCOMMITTEE OF THE REVENUE LAWS STUDY COMMITTEE, TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES, AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

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 program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit ~~shall~~ must 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 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 woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit ~~shall~~ must 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. 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 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.

(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).

e. Tenants in common, if each tenant is either a natural person or a business entity described in sub-subdivision b. of this subdivision. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is a natural person, and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity.

(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.~~ income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net

income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(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 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(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~~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 Poult 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.**

(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The ~~Board shall annually submit to the Department of Revenue a recommended use-value manual developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the manual, the Board may consult with federal and State agencies as needed. The Board shall submit to the Department of Revenue recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department.~~

~~The Board shall be chaired by the~~ Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board ~~and~~ shall consist of the following additional ~~members:~~members, to serve ex officio:

(1) A ~~a~~ representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of ~~Agriculture;~~Agriculture.

(2) A ~~a~~ representative of the Forest Resources Division of the Department of Environment and Natural Resources, designated by the Director of that ~~Division; and a~~Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm Bureau, designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association.

(b) Staff. – ~~All members shall serve ex officio.~~ The Agricultural Extension Service at North Carolina State University ~~shall~~ must provide clerical assistance to the Board.

(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic area. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are

presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from 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 and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's 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. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 7. G.S. 105-299 reads as rewritten:

"**§ 105-299. Employment of experts.**

The board of county commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist ~~him or her~~ the assessor in the performance of ~~such~~ these duties. The county may also assign to county agencies, or contract with State or federal agencies, for any duties involved with the approval or auditing of use-value accounts. The county may make available to ~~such~~ these persons any information it has that will facilitate the performance of a contract entered into pursuant to this section. Persons receiving ~~such~~ this information ~~shall be~~are subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and disclosure of information provided to them by the county. Any person employed by an appraisal firm whose duties include the appraisal of property for the county ~~shall~~ must be required to demonstrate that he or she is qualified to carry out ~~such~~ these duties by achieving a passing grade on a comprehensive examination in the appraisal of property administered by the Department of Revenue. In the employment of ~~such~~ these firms, primary consideration ~~shall~~ must be given to the firms registered with the Department of Revenue pursuant to ~~the provisions of~~ G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of the proposed contract may be sent by the board to the Department of Revenue for review before the invitation or acceptance of any bids. Contracts for the employment of these ~~such~~ firms or persons ~~shall be deemed to be~~ are contracts for personal services and ~~shall not be~~are not subject to the provisions of Article 8, Chapter 143, of the General Statutes."

SECTION 8. Article 12L of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-70.108. Property Tax Subcommittee.**

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of six members. The Senate cochair of the Committee shall designate three members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the

Subcommittee. The House cochair of the Committee shall designate three members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study 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.

(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.

(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee."

SECTION 9. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes:~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

SECTION 10. G.S. 105-164.16(b) reads as rewritten:

"(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the ~~15th~~last day of the month following the end of the quarter."

SECTION 11. G.S. 105-164.16(b2) reads as rewritten:

"(b2) Semimonthly. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.

A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the ~~amount due for each semimonthly payment period~~ lesser of the following and includes the underpayment with the monthly return for those semimonthly payment ~~periods.~~periods:

(1) The amount due for each semimonthly payment period.

(2) The average semimonthly payment for the prior calendar year."

SECTION 12. Part 5 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale."

SECTION 13. Sections 1 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 2003. Section 10 becomes effective October 1, 2002, and applies to taxes levied on or after that date. Section 11 becomes effective October 1, 2002, and applies to payments due on or after that date. Sections 8, 9, 12, and 13 are effective when they become law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

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SENATE BILL 1161

Finance Committee Substitute Adopted 7/24/02
Third Edition Engrossed 7/29/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1161-CSLAx-85 [v.2]

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Short Title: Amend Use Value Statutes and Other Tax Laws. (Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES, TO CREATE A PROPERTY TAX SUBCOMMITTEE OF THE REVENUE LAWS STUDY COMMITTEE, TO CLARIFY THE SALES AND USE TAX EXEMPTION REGARDING CERTAIN AGRICULTURAL SUBSTANCES, AND TO MAKE VARIOUS ADMINISTRATIVE CHANGES IN THE TAX LAWS.

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 program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit ~~shall~~ must 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 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 woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit ~~shall~~ must 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. 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 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.

(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).

e. Tenants in common, if each tenant is either a natural person or a business entity described in sub-subdivision b. of this subdivision. Tenants in common may elect to treat their individual shares as owned by them individually in accordance with G.S. 105-302(c)(9). The ownership requirements of G.S. 105-277.3(b) apply to each tenant in common who is a natural person and the ownership requirements of G.S. 105-277.3(b1) apply to each tenant in common who is a business entity.

(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.~~ income and assuming an average level of management. A rate of nine percent (9%) shall be used to capitalize the expected net

income of forestland. The capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board as provided in G.S. 105-277.7.

(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 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(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~~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 Poult 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.**

(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The ~~Board shall annually submit to the Department of Revenue a recommended use-value manual developed in accordance with the guidelines in G.S. 105-289(a)(5). In developing the manual, the Board may consult with federal and State agencies as needed. The Board shall submit to the Department of Revenue recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department.~~

~~The Board shall be chaired by the~~ Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board ~~and~~ shall consist of the following additional ~~members:~~members, to serve ex officio:

(1) A ~~a~~ representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of ~~Agriculture;~~Agriculture.

(2) A ~~a~~ representative of the Forest Resources Division of the Department of Environment and Natural Resources, designated by the Director of that ~~Division; and a~~Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm Bureau, designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.

(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.

(8) A representative of the North Carolina Forestry Association, designated by the President of the Association.

(b) Staff. ~~All members shall serve ex officio.~~ The Agricultural Extension Service at North Carolina State University ~~shall~~ must provide clerical assistance to the Board.

(c) Duties. – The Board must annually submit to the Department of Revenue a recommended use-value manual. In developing the manual, the Board may consult with federal and State agencies as needed. The manual must contain all of the following:

(1) The estimated cash rental rates for agricultural lands and horticultural lands for the various classes of soils found in the State. The rental rates must recognize the productivity levels by class of soil or geographic area. The rental rates must be based on the rental value of the land to be used for agricultural or horticultural purposes when those uses are

presumed to be the highest and best use of the land. The recommended rental rates may be established from individual county studies or from 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 and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's 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. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 7. G.S. 105-299 reads as rewritten:

"**§ 105-299. Employment of experts.**

The board of county commissioners may employ appraisal firms, mapping firms or other persons or firms having expertise in one or more of the duties of the assessor to assist ~~him or her~~ the assessor in the performance of ~~such~~ these duties. The county may also assign to county agencies, or contract with State or federal agencies, for any duties involved with the approval or auditing of use-value accounts. The county may make available to ~~such~~ these persons any information it has that will facilitate the performance of a contract entered into pursuant to this section. Persons receiving ~~such~~ this information ~~shall be~~are subject to the provisions of G.S. 105-289(e) and G.S. 105-259 regarding the use and disclosure of information provided to them by the county. Any person employed by an appraisal firm whose duties include the appraisal of property for the county ~~shall~~ must be required to demonstrate that he or she is qualified to carry out ~~such~~ these duties by achieving a passing grade on a comprehensive examination in the appraisal of property administered by the Department of Revenue. In the employment of ~~such~~ these firms, primary consideration ~~shall~~ must be given to the firms registered with the Department of Revenue pursuant to ~~the provisions of~~ G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a copy of the proposed contract may be sent by the board to the Department of Revenue for review before the invitation or acceptance of any bids. Contracts for the employment of these ~~such~~ firms or persons ~~shall be deemed to be~~ are contracts for personal services and ~~shall not be~~are not subject to the provisions of Article 8, Chapter 143, of the General Statutes."

SECTION 8. Article 12L of Chapter 120 of the General Statutes is amended by adding a new section to read:

"**§ 120-70.108. Property Tax Subcommittee.**

(a) The Revenue Laws Study Committee shall establish a Property Tax Subcommittee consisting of six members. The Senate cochair of the Committee shall designate three members appointed by the President Pro Tempore of the Senate to serve on the Subcommittee and shall name one of those members a cochair of the

Subcommittee. The House cochair of the Committee shall designate three members appointed by the Speaker of the House of Representatives to serve on the Subcommittee and shall name one of those members a cochair of the Subcommittee. The Subcommittee shall meet upon the call of the Subcommittee cochairs.

(b) The Property Tax Subcommittee shall study, examine, and, if necessary, recommend changes to the property tax system. The Subcommittee shall include in its study an examination of all classes of property, including exemptions and exclusions of property from the property tax base. The Subcommittee shall also study 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.

(5) Evaluate the possibility of adding more specific land and resource management criteria to the sound management programs required for all lands enrolled in the present-use value system.

(6) Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirement for land to qualify as forestland.

(c) The Subcommittee shall report any recommendations to the Revenue Laws Study Committee."

SECTION 9. G.S. 105-164.13(2a) reads as rewritten:

"(2a) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial ~~purposes:~~purposes. This exemption does not apply to any equipment or devices used to administer, release, apply, or otherwise dispense these substances:

a. Remedies, vaccines, medications, litter materials, and feeds for animals.

b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.

c. Defoliants for use on cotton or other crops.

d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops."

SECTION 10. G.S. 105-164.16(b) reads as rewritten:

"(b) Quarterly. – A taxpayer who is consistently liable for less than one hundred dollars ($100.00) a month in State and local sales and use taxes must file a return and pay the taxes due on a quarterly basis. A quarterly return covers a calendar quarter and is due by the ~~15th~~last day of the month following the end of the quarter."

SECTION 11. G.S. 105-164.16(b2) reads as rewritten:

"(b2) Semimonthly. – A taxpayer who is consistently liable for at least ten thousand dollars ($10,000) a month in State and local sales and use taxes must pay the tax twice a month and must file a return on a monthly basis. One semimonthly payment covers the period from the first day of the month through the 15th day of the month. The other semimonthly payment covers the period from the 16th day of the month through the last day of the month. The semimonthly payment for the period that ends on the 15th day of the month is due by the 25th day of that month. The semimonthly payment for the period that ends on the last day of the month is due by the 10th day of the following month.

A return covers both semimonthly payment periods. The return is due by the 20th day of the month following the month of the payment periods covered by the return. A taxpayer is not subject to interest on or penalties for an underpayment for a semimonthly payment period if the taxpayer timely pays at least ninety-five percent (95%) of the ~~amount due for each semimonthly payment period~~ lesser of the following and includes the underpayment with the monthly return for those semimonthly payment ~~periods.~~periods:

(1) The amount due for each semimonthly payment period.

(2) The average semimonthly payment for the prior calendar year."

SECTION 12. Part 5 of Article 5 of Chapter 105 is amended by adding a new section to read:

"**§ 105-164.28A. Other exemption certificates.**

(a) Authorization. – The Secretary may require a person who purchases tangible personal property that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the property to obtain an exemption certificate from the Department to receive the exemption or preferential rate. An exemption certificate authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who purchases tangible personal property under an exemption certificate is liable for any tax due on the sale if the Department determines that the person is not eligible for the certificate or the property was not used as intended.

(b) Scope. – This section does not apply to a direct pay permit or a certificate of resale. G.S. 105-164.27A addresses a direct pay permit, and G.S. 105-164.28 addresses a certificate of resale."

SECTION 13. Sections 1 through 7 of this act are effective for taxes imposed for taxable years beginning on or after July 1, 2003. Section 10 becomes effective October 1, 2002, and applies to taxes levied on or after that date. Section 11 becomes effective October 1, 2002, and applies to payments due on or after that date. Sections 8, 9, 12, and 13 are effective when they become law.

SENATE BILL 1161:
Amend Use Value Statutes and Other Tax Laws

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Senator Hartsell
Date:	August 21, 2002	**Analysis by:**	Martha Walston
Version:	S1161-CSLAx-85		Committee Counsel

SUMMARY: The proposed committee substitute for SB 1161 contains two recommendations of the Revenue Laws Study Committee:

1. *Sections 1-8 of the bill seek to amend the present-use value statutes to more accurately determine the realistic present-use value of agricultural land, horticultural land, and forestland for property tax purposes. These changes were given a favorable report by House Agriculture on August 20 when it considered the 3rd edition of SB 1161.*
2. *Sections 9 through 12 make several changes and clarifications in the tax laws. THESE SAME CHANGES AND CLARIFICATIONS WERE EARLIER CONSIDERED AND GIVEN A FAVORABLE REPORT BY HOUSE FINANCE ON JUNE 13, WHEN THE COMMITTEE EXAMINED HOUSE BILL 1509 (A REVENUE LAWS RECOMMENDATION SPONSORED BY REP. HOLLIMAN, LUEBKE, AND WAINWRIGHT).*

SECTIONS 1-8 of the bill are 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.*

NB 1509

SECTIONS 9-12 of the bill make the following changes and clarifications in the tax laws:

- *It clarifies that the sales and use tax exemption for certain agricultural substances does not include any equipment or devices used to apply those substances.*
- *It changes the due date of quarterly sales tax returns from the 15th of a month to the last day of a month to enable the Department to spread the processing work more evenly throughout the month.*
- *It changes the underpayment penalty calculation for semimonthly sales tax payers to conform to the requirements of the Streamlined Sales Tax Project.*
- *It clarifies the use of sales and use tax exemption certificates.*

SECTION 13 of the bill sets out the effective dates.

USE VALUE 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 statutes[1]:

- 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.**
  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.

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[1] The proposed changes are in bold type.

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 accepts 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]**

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[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

- **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.**
- **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.

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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.

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 statues.**
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 taxes 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.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1161 (PCS to the 3rd Edition)

DRAFT

SHORT TITLE: **Amend Use Value Statutes**

SPONSOR(S):

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	Potential Revenue Change – See Assumptions and Methodology				
Local Governments	*** Potential Revenue Change ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue and Local Governments.

EFFECTIVE DATE: Sections 1 – 7 are effective for tax years beginning on or after July 1, 2003. Section 10 becomes effective October 1, 2002 and applies to taxes levied on or after that date. Section 11 becomes effective October 1, 2002 and applies to payments due on or after that date. The remainder becomes effective when law.

BILL SUMMARY: The bill has two primary components. The first component addresses the property tax treatment of special classes of property. Under current law, farmers are charged property taxes based on the land value for agricultural and horticultural purposes, rather than the full market price. In general, this value is lower than the market price because it does not reflect any potential alternative uses for the property (i.e. new homes, commercial development, or industrial facilities). Under the current system the adjusted value for agriculture is based on the market price for corn and soybeans, as well as the cost of producing corn and soybeans. A Use Value Advisory Board is charged with determining the basis for horticultural land. The Use Value Advisory Board has generally created a manual each year. County tax assessors can use this manual to determine values under the use value program, or can include their own values in line with the county's schedule of values. This bill changes the current program in several ways. In Section 1, the proposal exempts certain agricultural, forestland, and horticultural land from the existing sound management program requirement, primarily if the "highest and best use" of the forestland is to serve as a buffer, or a small portion of the agricultural or horticultural unit is actually woodland. Second, it clarifies that the term "tenants in common" is a form of individually owned property for use value participation purposes. It also clarifies that each beneficiary

of a family trust must be a natural person to meet the individually owned requirements. This section also provides that the Use Value Advisory Board determines the appropriate income and capitalization rates to be used to determine use value.

Section 2 clarifies that when land under the use value program is transferred to a new owner who intends to continue under the program, the deferred taxes remain a lien on the property. It also requires that the new owner file an application for use value within 60 days of the transfer, certify that they intend to continue to use the property for an allowable activity under the use value program, and accept liability for the deferred taxes if the requirements are not met. This section also clarifies that land voluntarily removed from production due to participation in certain federal programs will not be considered in actual production for use value purposes. This section of the bill also addresses the issue of conservation easements, taxation of land subject to those easements, and the roll back of taxes when land is placed under a conservation easement. A conservation easement limits the ways a particular piece of land can be used, generally to limit development. As such, a conservation easement has the potential to lessen the "highest and best" use of the property, and therefore limit its value for property tax purposes. Under currently law, when agricultural or forestland is placed under a conservation easement, and continues to be actively managed, no change in tax value or roll back of taxes should occur. However, if land in the use value program is placed under an easement and is no longer actively managed, the county will collect a roll back of deferred taxes, and will reassess the value of the property. This section of the bill removes the rollback when the land is placed under an easement and is removed from the use value program. It also insures that that particular parcel will continue to be taxed as agricultural or forest land as long as the easement is in place, regardless of the actual use of the land.

Section 3 modifies existing law to allow a taxpayer to file an application at any time during the calendar year if such an application is required due to a land transfer. It also clarifies that failure to have an application approved is grounds for disqualification from the program.

Section 4 makes the most significant changes to current law in this component of the bill. It modifies both the membership and duties of the Use Value Advisory Board. The new members include a representative of the Farm Bureau, a representative of the NC Association of Assessing Officers, the Director of the Property Tax Division of the Department of Revenue, a representative of the NC Association of County Commissioners, and representative of the Forestry Association. The Board is now charged with determining expected net incomes per acre for agricultural and horticultural land based on cash rental rates. (Currently yields and prices of corn, soybeans, and various horticultural products are used as the base). Thus, this section of the bill changes the tax basis for both types of land to cash rents. Section 4 also requires that the Use Value Advisory Board annually select a capitalization rate for converting incomes into values. This capitalization rate must be between 6% and 7%. It also limits the maximum value for agricultural land to $1,200 per acre.

Section 5 requires the Department of Revenue to study cash rents for agricultural lands, and moves some existing language to a different section of the Machinery Act. Section 6 authorizes the assessor to request assistance in the review and clarifies that the assessor may

require the owner to submit evidence of the existence of a sound management plan. Section 7 gives county commissions the authority to assign county agents or contract with other state and federal agencies to assist with the use valuation process.

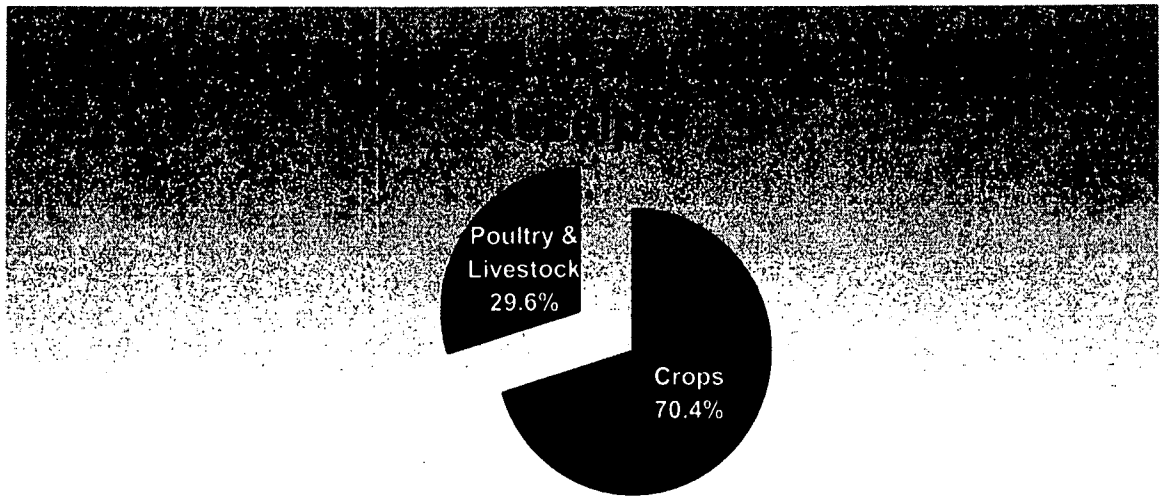
Section 8 of the bill creates a property tax subcommittee of the Revenue Laws Study Committee. This subcommittee will include six (6) members, and is charged with studying, examining, and (if necessary) recommending changes to the property tax system. The subcommittee is also instructed to examine all classes of property, including exemption and exclusions. This subcommittee is also charged with studying the present-use value system. All reports and recommendations are to be made to Revenue Laws.

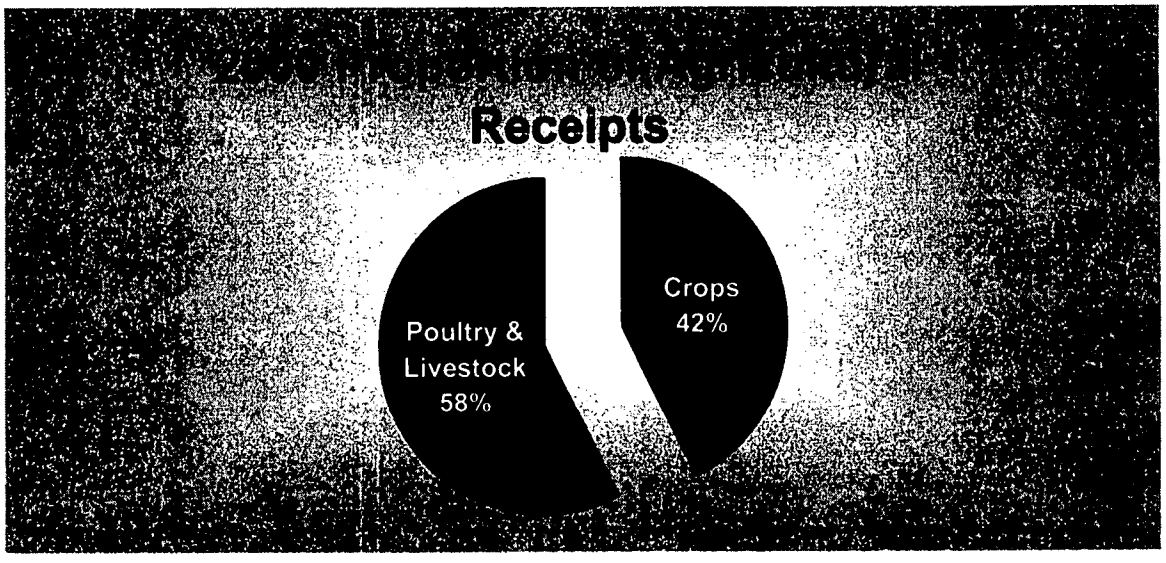
The second component of the bill addresses several technical issues considered by Revenue Laws. Specifically, Section 9 clarifies that equipment used to dispense plant growth inhibitors is not exempt from sales tax. Section 10 changes the due date for quarterly sales tax returns from the 15th of the month to the last day of the month, following the end of the quarter. Section 11 changes the underpayment penalty calculation for semimonthly taxpayers to conform to the Streamlined Sales Tax Project. Section 12 clarifies the use of sales and use tax exemption certificates.

BACKGROUND:

Under G.S. 105-289(a)5 the Department of Revenue and the Use Value Advisory Committee are instructed to develop a manual to assist county assessors in determining the use-value of agricultural, horticultural, and forest land. The law states that the use value should be based on expected net income from the property. The expected net income for agricultural land is based on actual yields, the price of corn and soybeans for the past five years, and the actual cost of growing corn and soybeans during that same period. The law allows the committee to set a method for determining the income potential of horticultural land. At the time this law was adopted, crops represented 52.8% of agricultural cash receipts.

In 1996, 1997, and 1999 the Revenue Laws Study Committee was informed that corn and soybean prices might no longer be the most appropriate method for determining the expected income for farmland, as crops were no longer the primary agricultural product of the state, and corn and soybeans represent an extremely small subset of crop receipts. As noted in the charts below, the proportion of agricultural cash receipts that come from crops has declined from 70.4% in 1964 to 42.4% in 2000. In 2000 corn and soybeans are only 3.8% of the total farm cash receipts, suggesting that those two items were approximately 8.9% of the crop total.





SOURCES OF DATA: North Carolina Department of Agriculture and Consumer Services, Agriculture Statistics Section.

In 1996 Revenue Laws was also informed that cost of production data for corn and soybeans was also no longer available, as the federal government no longer created that database. As a result of these two factors, limited data and shifts in agricultural production, Revenue Laws directed the Use Value Advisory Board to study the issue and return to Revenue Laws with their recommendation for a new system.

ASSUMPTIONS AND METHODOLOGY:

There are three primary fiscal impact related issues in the bill.

Agricultural Use Value

In May 1998 researchers from the North Carolina Cooperative Extension Service conducted a statewide survey to determine the appropriateness of cash rent as a new basis for the use value system. The survey asked Extension Directors, Tax Assessors, Farm Credit Service

Appraisers, and farmers to provide estimates of agricultural land values (when sold as agricultural land) and agricultural cash rents. Estimates were given for low, medium, and high productivity land. The data was sorted by region (referred to as a Major Land Resource Area or MLRA). Allowances were also made for quota crops. The Extension Service received responses from 98 County Extension Directors and 98 County Tax Assessors. Farm Credit also gave estimates for all 100 counties. They received at least one farmer response from 75 counties.

When the Use Value Advisory Board compared the sale price of farmland sold as farmland to the cash rent derived from that land, it found the average rent to value ratio to be 2% in most of the MLRAs. The notable exception is the Tidewater region where the average rent to value ratio is 4.5%. This ratio most closely reflects the true rent to value ratio because the agricultural use of the property in that region is often its highest and best use since there are not many competing pressures to increase the value of the property. For this reason, the Use Value Advisory Board recommended using a 5% capitalization rate. Also, 5% is the nationwide average capitalization rate for farmland.

Since that time the Department of Revenue and the Extension Service have attempted to update their findings. This new survey indicates that only 57 counties are currently using the Use Value Advisory Board manual, while 39 are not (4 counties did not report or did not have agriculture acres in the use value program). The data also showed that at a 6% cap rate under a cash rent system, 64 counties would gain revenue, while 32 would lose. At 7% the numbers move to 40 counties that will gain and 55 that will lose revenue. (The Use Value Advisory Board is charged with choosing a rate between 6% and 7%). The average rent to value ratio in this survey was 7.57%. A review of the newer revaluations suggests an average rent to value ratio of 6% or less.

At this time no data is available on the number of acres in the program in each county. Therefore, no overall estimate of the fiscal impact of this portion of the bill is possible. Additionally, no good data is available on the impact of the other changes in the bill, although the overall statewide impact is expected to be fairly small.

Conservation Easements

Section 2 of the bill makes two changes to the property tax treatment of lands subject to a conservation easement. The first of these relate to tax rollbacks. Under current law, if land no longer used for the purpose for which it receives special tax treatment under the use value program, the owner of that property is subject to what is called "roll back". This essentially means the owner has to pay the difference between the tax on the property if it would have been valued at "market" and the tax on the property under the use value program, for the past three years. Under this legislation, the property owner would no longer be subject to the roll back if the land was subject to a conservation easement. A statewide survey of tax assessors indicates the following amounts were remitted to the counties for "roll back" in the most recent fiscal year:

County Name	Rollback	Include Municipal Taxes?
Alexander	$11,600.00	No
Buncombe	$158,564.10	Yes
Catawba	$28,460.44	Yes
Chatham	$87,717.00	No
Chowan	$16,743.06	Yes
Cleveland	$116,729.00	Yes
Cumberland	$162,505.44	Yes
Currituck	$38,940.00	No
Davie	$40,991.90	Yes
Durham	$213,849.67	Yes
Forsyth	$105,950.16	Yes
Gaston	$28,098.00	Yes
Greene	$34,410.00	?
Haywood	$44,817.00	?
Henderson	$19,011.61	No
Hertford	$27,838.00	Yes
Hoke	$52,457.14	No
Jackson	$7,165.20	No
Johnston	$163,190.55	Yes
Jones	$17,360.95	No
Lee	$7,384.06	Yes
Macon	$35,470.00	No
Mecklenburg	$697,441.23	Yes
Moore	$58,000.00	Yes
Nash	$122,362.00	No
New Hanover	$67,666.00	Yes
Northampton	$22,472.00	Yes
Onslow	$30,846.00	Yes
Pasquotank	$24,791.10	No
Pender	$70,797.00	No
Person	$28,202.00	Yes
Pitt	$229,445.00	?
Randolph	$46,782.03	No
Rockingham	$83,230.00	?
Rutherford	$18,495.84	Yes
Scotland	$10,932.40	No
Stanly	$22,000.00	Yes
Surry	$33,633.00	No
Union	$95,739.47	No
Washington	$21,113.00	No
Wayne	$53,300.00	Yes
Wilkes	$17,470.63	No
Yadkin	$20,720.53	No
TOTAL	$3,194,692.51	

This amount represents the total amount of roll back under all circumstances, not the amount of roll back due to leaving the agriculture use program under a conservation easement. According to property tax experts, the proportion of this amount is likely to be relatively small, but no specific numbers are available. At present Fiscal Research is aware of two properties – one in Wake and one in Rutherford – where land that is currently under the use value program may become subject to a conservation easement. Other situations could exist, but are not known to Fiscal staff. Further, it is expected that the amount and value of land placed under a conservation easement will vary according to federal tax incentives. As such, no fiscal estimate is possible on this portion of the bill.

The second fiscal impact relating to conservation easement relates to the tax treatment of that land over time. As was mentioned previously, this bill continues to hold land that was under the use value program in the program as long as the property is under a conservation easement. This means that property that was once in active agricultural production would continue to be treated as if it was in production, regardless of how the land is now used, as long as it is subject to a conservation easement. Fiscal Research is not aware of any other state that treats land under conservation easement in exactly the same manner. Officials at the Clean Water Trust Fund have also attempted to develop an estimate based on their plans and that of similar organizations. However, because of the complexities of the bill and the limited data on property tax values related to easement, no data is available at this time. As such, no fiscal estimate is possible on this portion of the bill.

Other Revenue Issues

The third portion of the bill relates to other revenue related changes recommended by the Revenue Laws Study Committee.

Section 9: This proposal is a result of a North Carolina Court of Appeals decision. In American Ripener Co. Inc. v. Muriel K. Offerman, Secretary of Revenue, the court considered the application of state sales taxes to a plant growth regulator or stimulator which controls the ripening of fruits and vegetables (ethylene), as well as the equipment used to deliver that chemical. Tax on replacement parts was also an issue. The court held that all of these items are exempt from sales and use tax under G.S. 105-164.13(2) and G.S. 105-164.13 (2a) which exempts "plant growth inhibitors, regulators, or stimulators for agriculture including systematic and contact or other sucker control agents for tobacco and other crops". The court also ruled that the generators and associate parts are also inhibitors and are therefore exempt from sales tax. The proposal effectively amends G.S. 105-164.13(2a) to make the equipment and parts associated with this gas treatment subject to sales and use taxes. (The Department had previously assumed all these items were taxable). In making it's ruling, the court effectively reduced sales tax revenue. The bill would restore at least some of that revenue to the General Fund. As such, the bill in and of itself would create a small revenue gain. However, Fiscal Research is unable to create an exact estimate of the value of ethylene delivery parts and equipment. As a result, no estimate is possible on this portion of the proposal.

Section 10: Currently the Department of Revenue receives monthly withholding returns, monthly sales tax returns, and quarterly sales tax returns on the 15th of the month. On the 15th of March, April, September, and October income tax returns are due as well. Shifting the due date of quarterly sales and use tax returns from the 15th of the month to the end of the month will create a more even

distribution of work in the Department. Because the payments are due in the month following the end of the quarter (October, February, April, and July) the shift will not move any revenue from one fiscal year to the next. Some loss of interest on the payments or "float" will occur. However, because of the relatively small sums of money involved, the Department expects the loss to be minimal.

Section 11: This section changes the calculation of penalty for underpayment by semimonthly sales tax payers. Under current law, the taxpayer must remit at least 95% of the amount due for each semimonthly payment period. This proposal allows the taxpayer to remit the lesser of this amount or the average semimonthly payment for the prior calendar year. Clearly this proposal will result in some loss of penalty revenue. However, no data is available to determine the magnitude of the loss. The Department expects the loss to be slight.

Section 12: Historically the Department of Revenue has issued exemption certificates to taxpayers in certain exempted industries to facilitate tax administration. However, there is no reference to exemption certificates in the statutes, except as it relates to penalties for misuse of such a certificate. This proposal would codify the practice of issuing exemption certificates. Since the proposal is only codifying the existing practice of the Department, no fiscal impact is expected.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: August 20, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ House Committee Substitute for
S.B. 1054 A BILL TO BE ENTITLED AN ACT TO REFORM THE METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES AND TO ESTABLISH A FAIR ELECTIONS FUND THAT PROVIDES CANDIDATES FOR THESE OFFICES WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS.

☐ 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 (# 2), ☒ which changes the title, unfavorable as to House Committee Substitute Bill #1.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1054
Judiciary I Committee Substitute Adopted 9/10/01
Finance Committee Substitute Adopted 11/13/01
House Committee Substitute Favorable 7/29/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1054-PCS4761-RR-73

Short Title: Judicial Campaign Reform Act. (Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A NONPARTISAN METHOD OF ELECTING SUPREME COURT JUSTICES AND COURT OF APPEALS JUDGES BEGINNING IN 2004; TO SET $1,000 CONTRIBUTION LIMITS ($2,000 FROM FAMILY MEMBERS) FOR JUDICIAL CAMPAIGNS BEGINNING IN 2004; TO ESTABLISH A PUBLIC CAMPAIGN FINANCING FUND THAT PROVIDES APPELLATE JUDICIAL CANDIDATES WHO AGREE TO CONTRIBUTION AND EXPENDITURE RESTRICTIONS WITH AN ALTERNATIVE MEANS OF FINANCING THEIR CAMPAIGNS BEGINNING IN 2004; TO SAFEGUARD CANDIDATES WHO OPT TO USE THAT SYSTEM BY PROHIBITING CERTAIN CONTRIBUTIONS TO THEIR OPPONENTS DURING THE TWENTY-ONE DAYS BEFORE AN ELECTION AND BY PROVIDING RESCUE MONEY WHEN THEY FACE LARGE EXPENDITURES BY OPPONENTS OR LARGE INDEPENDENT EXPENDITURES; TO PROVIDE A JUDICIAL VOTER GUIDE TO BE FINANCED BY THE FUND; TO PROVIDE THAT THE FUND SHALL BE ADMINISTERED BY THE STATE BOARD OF ELECTIONS ASSISTED BY AN ADVISORY COUNCIL; AND TO PROVIDE THAT THE FUND SHALL BE FINANCED BY METHODS INCLUDING A REVERSE $1 CHECK-OFF ON THE NORTH CAROLINA INCOME TAX AND A $50 CONTRIBUTION BY ATTORNEYS WHEN THEY PAY THEIR PRIVILEGE LICENSE TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

"Article 22D.

"The North Carolina Public Campaign Financing Fund.

"**§ 163-278.61. Purpose of the North Carolina Public Campaign Financing Fund.**

The purpose of this Article is to ensure the fairness of democratic elections in North Carolina and to protect the constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, those effects being especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, this Article establishes the North Carolina Public Campaign Financing Fund as an alternative source of campaign financing for candidates who demonstrate public support and voluntarily accept strict fund-raising and spending limits. This Article is available to candidates for justice of the Supreme Court and judge of the Court of Appeals in elections to be held in 2004 and thereafter.

"**§ 163-278.62. Definitions.**

The following definitions apply in this Article:

(1) Board. – The State Board of Elections.

(2) Candidate. – An individual who becomes a candidate as described in G.S. 163-278.6(4). The term includes a political committee authorized by the candidate for that candidate's election.

(3) Certified candidate. – A candidate running for office who chooses to receive campaign funds from the Fund and who is certified under G.S. 163-278.64(c).

(4) Contested primary and contested general election. – An election in which there are more candidates than the number to be elected.

(5) Contribution. – Defined in G.S. 163-278.6.

(6) Expenditure. – Defined in G.S. 163-278.6.

(7) Fund. – The North Carolina Public Campaign Financing Fund established in G.S. 163-278.63.

(8) Independent expenditure. – Defined in G.S. 163-278.6.

(9) Maximum qualifying contributions. – An amount of qualifying contributions equal to 60 times the filing fee for candidacy for the office.

(10) Minimum qualifying contributions. – An amount of qualifying contributions equal to 30 times the filing fee for candidacy for the office.

(11) Nonparticipating candidate. – A candidate running for office who is not seeking to be certified under G.S. 163-278.64(c).

(12) Office. – A position on the North Carolina Court of Appeals or North Carolina Supreme Court.

(13) Participating candidate. – A candidate for office who has filed a declaration of intent to participate under G.S. 163-278.64.

(14) Political committee. – Defined in G.S. 163-278.6.

(15) Qualifying contribution. – A contribution of not less than ten dollars ($10.00) and not more than five hundred dollars ($500.00) in the form of a check or money order to the candidate or the candidate's

committee that meets both of the following conditions:

a. Made by any registered voter in this State.

b. Made during the qualifying period and obtained with the approval of the candidate or candidate's committee.

(16) Qualifying period. – The period beginning September 1 in the year before the election and ending on the day of the primary of the election year.

(17) Referendum committee. – Defined in G.S. 163-278.6.

(18) Trigger for rescue funds. – The dollar amount at which rescue funds are released for certified candidates. In the case of a primary, the trigger equals the maximum qualifying contributions for participating candidates. In the case of a contested general election, the trigger equals the base level of funding available under G.S. 163-278.65(b)(4).

"**§ 163-278.63. North Carolina Public Campaign Financing Fund established; sources of funding.**

(a) Establishment of Fund. – The North Carolina Public Campaign Financing Fund is established to finance the election campaigns of certified candidates for office and to pay administrative and enforcement costs of the Board related to this Article. The Fund is a special, dedicated, nonlapsing, nonreverting fund. All expenses of administering this Article, including production and distribution of the Voter Guide required by G.S. 163-278.69 and personnel and other costs incurred by the Board, shall be paid from the Fund and not from the General Fund. Any interest generated by the Fund is credited to the Fund. The Board shall administer the Fund.

(b) Sources of Funding. – Money received from all the following sources must be deposited in the Fund:

(1) Money from the North Carolina Candidates Financing Fund.

(2) Designations made to the Public Campaign Financing Fund by individual taxpayers pursuant to G.S. 105-159.2.

(3) Any contributions made by attorneys in accordance with G.S. 105-41.

(4) Public Campaign Financing Fund revenues distributed for an election that remain unspent or uncommitted at the time the recipient is no longer a certified candidate in the election.

(5) Money ordered returned to the Public Campaign Financing Fund in accordance with G.S. 163-278.70.

(6) Voluntary donations made directly to the Public Campaign Financing Fund. Corporations, other business entities, labor unions, and professional associations may make donations to the Fund.

(c) Determination of Fund Amount. – By October 1, 2003, and every two years thereafter, the Board, in conjunction with the Advisory Council for the Public Campaign Financing Fund, shall prepare and provide to the Joint Legislative Commission on Governmental Operations of the General Assembly a report documenting, evaluating, and making recommendations relating to the administration, implementation, and enforcement of this Article. In its report, the Board shall set out the funds received to date and the expected needs of the Fund for the next election.

"**§ 163-278.64. Requirements for participation; certification of candidates.**

(a) Declaration of Intent to Participate. – Any individual choosing to receive campaign funds from the Fund shall first file with the Board a declaration of intent to participate in the act as a candidate for a stated office. The declaration of intent shall be filed before or during the qualifying period and before collecting any qualifying contributions. In the declaration, the candidate shall swear or affirm that only one political committee, identified with its treasurer, shall handle all contributions, expenditures, and obligations for the participating candidate and that the candidate will comply with the contribution and expenditure limits set forth in subsection (d) of this section and all other requirements set forth in this Article or adopted by the Board. Failure to comply is a violation of this Article.

(b) Demonstration of Support of Candidacy. – Except for candidates described elsewhere in this subsection, participating candidates who seek certification to receive campaign funds from the Fund shall first, during the qualifying period, obtain qualifying contributions from at least 350 registered voters in an aggregate sum that at least equals the amount of minimum qualifying contributions described in G.S. 163-278.62(10) but that does not exceed the amount of maximum qualifying contributions described in G.S. 163-278.62(9).

No payment, gift, or anything of value shall be given in exchange for a qualifying contribution.

(c) Certification of Candidates. – Upon receipt of a submittal of the record of demonstrated support by a participating candidate, the Board shall determine whether or not the candidate has complied with all the following requirements, if they apply to that candidate:

(1) Signed and filed a declaration of intent to participate in this Article.

(2) Submitted a report itemizing the appropriate number of qualifying contributions received from registered voters, which the Board shall verify through a random sample or other means it adopts. The report shall include the county of residence of each registered voter listed.

(3) Qualified to receive votes on the ballot as a candidate for the office.

(4) Otherwise met the requirements for participation in this Article.

The Board shall certify candidates complying with the requirements of this section as soon as possible and no later than five business days after receipt of a satisfactory record of demonstrated support.

(d) Restrictions on Contributions and Expenditures for Participating and Certified Candidates. – The following restrictions shall apply to contributions and expenditures with respect to participating and certified candidates:

(1) Beginning January 1 of the year before the election and before the filing of a declaration of intent, a candidate for office may accept in contributions up to ten thousand dollars ($10,000) from sources and in amounts permitted by Article 22A of this Chapter and may expend up to ten thousand dollars ($10,000) for any campaign purpose. A candidate who exceeds either of these limits shall be ineligible to file a

declaration of intent or receive funds from the Public Campaign Financing Fund.

(2) From the filing of a declaration of intent through the end of the qualifying period, a candidate shall expend no more than an amount equal to the maximum qualifying contributions for that candidate, not including possible rescue funds or the remaining money raised pursuant to subdivision (1) of this subsection. Contributions a candidate may use to expend to that limit shall be limited to qualifying contributions and personal and family contributions permitted by subdivision (4) of this subsection.

(3) After the qualifying period and through the date of the general election, the candidate shall expend only the funds the candidate receives from the Fund pursuant to G.S. 163-278.65(b)(4) plus any funds remaining from the qualifying period and possible rescue funds.

(4) During the qualifying period, the candidate may contribute up to one thousand dollars ($1,000) of that candidate's own money to the campaign and may accept in contributions one thousand dollars ($1,000) from each member of that candidate's family consisting of spouse, parent, child, brother, and sister.

(5) A candidate and the candidate's committee shall limit the use of all revenues permitted by this subsection to expenditures for campaign-related purposes only. The Board shall publish guidelines outlining permissible campaign-related expenditures.

(6) Any contribution received by a participating or certified candidate that falls outside that permitted by this subsection shall be returned to the donor as soon as practicable. Contributions intentionally made, solicited, or accepted in violation of this Article are subject to civil penalties as specified in G.S. 163-278.70. The funds involved shall be forfeited to the Civil Penalty and Forfeiture Fund.

(7) A candidate shall return to the Fund any amount distributed for an election that is unspent and uncommitted at the date of the election, or at the time the individual ceases to be a certified candidate, whichever occurs first. For accounting purposes, all qualifying, personal, and family contributions shall be considered spent before revenue from the Fund is spent or committed.

(e) Revocation. – A candidate may revoke, in writing to the Board, a decision to participate in the Public Campaign Financing Fund at any time before the deadline set by the Board for the candidate's submission of information for the Voter Guide described in G.S. 163-278.69. After a timely revocation, that candidate may accept and expend outside the limits of this Article without violating this Article. Within 10 days after revocation, a candidate shall return to the Board all money received from the Fund.

"**§ 163-278.65. Distribution From the Fund.**

(a) Timing of Fund Distribution. – The Board shall distribute to a certified candidate revenue from the Fund in an amount determined under subdivision (b)(4) of

this section within five business days after the certified candidate's name is approved to appear on the ballot in a contested general election, but no earlier than five business days after the primary.

(b) Amount of Fund Distribution. – By August 1, 2003, and no less frequently than every two years thereafter, the Board shall determine the amount of funds, rounded to the nearest one hundred dollars ($100.00), to be distributed to certified candidates as follows:

(1) Uncontested primaries. – No funds shall be distributed.

(2) Contested primaries. – No funds shall be distributed except as provided in G.S. 163-278.67.

(3) Uncontested general elections. – No funds shall be distributed.

(4) Contested general elections. – Funds shall be distributed to a certified candidate for a position on the Court of Appeals in an amount equal to 125 times the candidate's filing fee as set forth in G.S. 163-107. Funds shall be distributed to a certified candidate for a position on the Supreme Court in an amount equal to 175 times the candidate's filing fee as set forth in G.S. 163-107.

(c) Method of Fund Distribution. – The Board, in consultation with the State Treasurer and the State Controller, shall develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the Board shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability, and safeguards the integrity of the Fund. If the money in the Fund is insufficient to fully fund all certified candidates, then the available money shall be distributed proportionally, according to each candidate's eligible funding.

"**§ 163-278.66. Reporting requirements.**

(a) Reporting by Noncertified Candidates and Independent Expenditure Entities. – Any noncertified candidate with a certified opponent shall report total income, expenses, and obligations to the Board by facsimile machine or electronically within 24 hours after the total amount of campaign expenditures or obligations made, or funds raised or borrowed, exceeds eighty percent (80%) of the trigger for rescue funds as defined in G.S. 163-278.62(18). Any entity making independent expenditures in excess of three thousand dollars ($3,000) in support of or opposition to a certified candidate shall report the total funds received, spent, or obligated for those expenditures to the Board by facsimile machine or electronically within 24 hours after the total amount of expenditures or obligations made, or funds raised or borrowed, for the purpose of making the independent expenditures, exceeds fifty percent (50%) of the trigger for rescue funds. After this 24-hour filing, the noncertified candidate or independent expenditure entity shall comply with an expedited reporting schedule by filing additional reports after receiving each additional amount in excess of one thousand dollars ($1,000) or after making or obligating to make each additional expenditure(s) in excess of one thousand dollars ($1,000). The schedule and forms for reports required by this subsection shall be made according to procedures developed by the Board.

(b) Reporting by Participating and Certified Candidates. – Notwithstanding other provisions of law, participating and certified candidates shall report any money

received, including all previously unreported qualifying contributions, all campaign expenditures, obligations, and related activities to the Board according to procedures developed by the Board. A certified candidate who ceases to be certified or ceases to be a candidate or who loses an election shall file a final report with the Board and return any unspent revenues received from the Fund. In developing these procedures, the Board shall utilize existing campaign reporting procedures whenever practical.

(c) Timely Access to Reports. – The Board shall ensure prompt public access to the reports received in accordance with this Article. The Board may utilize electronic means of reporting and storing information.

"**§ 163-278.67. Rescue funds.**

(a) When Rescue Funds Become Available. – When any report or group of reports shows that 'funds in opposition to a certified candidate or in support of an opponent to that candidate' as described in this section, exceed the trigger for rescue funds as defined in G.S. 163-278.62(18), the Board shall issue immediately to that certified candidate an additional amount equal to the reported excess within the limits set forth in this section. 'Funds in opposition to a certified candidate or in support of an opponent to that candidate' shall be equal to the sum of the following:

(1) Campaign expenditures or obligations made, or funds raised or borrowed, whichever is greater, reported by any one uncertified opponent of a certified candidate. Where a certified candidate has more than one uncertified opponent, the measure shall be taken from the uncertified candidate showing the highest relevant dollar amount.

(2) The sum of all expenditures reported in accordance with G.S. 163-278.66 of entities making independent expenditures in opposition to the certified candidate or in support of any opponent of that certified candidate.

(b) Limit on Rescue Funds in Contested Primary. – Total rescue funds to a certified candidate in a contested primary shall be limited to an amount equal to two times the maximum qualifying contributions for the office sought.

(c) Limit on Rescue Funds in Contested General Election. – Total rescue funds to a certified candidate in a contested general election shall be limited to an amount equal to two times the amount described in G.S. 163-278.65(b)(4).

"**§ 163-278.68. Enforcement and administration.**

(a) Enforcement by the Board. – The Board, with the advice of the Advisory Council for the Public Campaign Financing Fund, shall administer the provisions of this Article.

(b) Advisory Council for the Public Campaign Financing Fund. – There is established under the Board the Advisory Council for the Public Campaign Financing Fund to advise the Board on the rules, procedures, and opinions it adopts for the enforcement and administration of this Article and on the funding needs and operation of the Public Campaign Financing Fund. The Advisory Council shall consist of five members to be appointed as follows:

(1) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the

greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(2) The Governor shall name two members from a list of individuals nominated by the State Chair of the political party with which the second greatest number of registered voters is affiliated. The State Chair of that party shall submit to the Governor the names of five nominees.

(3) The Board shall name one member by unanimous vote of all members of the Board. If the Board cannot reach unanimity on the appointment of that member, the Advisory Council shall consist of the remaining members.

No individual shall be eligible to be a member of the Advisory Council who would be ineligible to serve on a county board of elections in accordance with G.S. 163-30. The initial members shall be appointed by December 1, 2002. Of the initial appointees, two are appointed for one-year terms, two are appointed for two-year terms, and one is appointed for a three-year term according to random lot. Thereafter, appointees are appointed to serve four-year terms. An individual may not serve more than two full terms. The appointed members receive the legislative per diem pursuant to G.S. 120-3.1. One of the Advisory Council members shall be elected by the members as Chair. A vacancy during an unexpired term shall be filled in the same manner as the regular appointment for that term, but a vacancy appointment is only for the unexpired portion of the term.

(c) Appeals. – The initial decision on an issue concerning qualification, certification, or distribution of funds under this Article shall be made by the Executive Director of the Board. The procedure for challenging that decision is as follows:

(1) An individual or entity aggrieved by a decision by the Executive Director of the Board may appeal to the full Board within three business days of the decision. The appeal shall be in writing and shall set forth the reasons for the appeal.

(2) Within five business days after an appeal is properly made, and after due notice is given to the parties, the Board shall hold a hearing. The appellant has the burden of providing evidence to demonstrate that the decision of the Executive Director was improper. The Board shall rule on the appeal within three business days after the completion of the hearing.

(d) Board to Adopt Rules and Issue Opinions. – The Board shall adopt rules and issue opinions to ensure effective administration of this Article. Such rules and opinions shall include, but not be limited to, procedures for obtaining qualifying contributions, certification of candidates, addressing circumstances involving special elections, vacancies, recounts, withdrawals, or replacements, collection of revenues for the Fund, distribution of Fund revenue to certified candidates, return of unspent Fund disbursements, and compliance with this Article. The Board shall adopt procedures for the distribution of rescue money that further the purpose and avoid the subversion of G.S. 163-278.67. For races involving special elections, recounts, vacancies,

withdrawals, or replacement candidates, the Board shall establish procedures for qualification, certification, disbursement of Fund revenues, and return of unspent Fund revenues. The Board shall fulfill each of these duties in consultation with the Advisory Council on the Public Campaign Financing Fund.

(e) Report to the Public. – The Advisory Council for the Public Campaign Financing Fund shall issue a report by March 1, 2005, and every two years thereafter that evaluates and makes recommendations about the implementation of this Article and the feasibility of expanding its provisions to include other candidates for State office based on the experience of the Fund and the experience of similar programs in other states. The Advisory Council shall also evaluate and make recommendations regarding how to address activities that could undermine the purpose of this Article, including spending that appears to target candidates receiving money from the Fund but that does not meet the definition of 'independent expenditures.'

"**§ 163-278.69. Voter education.**

(a) Judicial Voter Guide. – The Board shall publish a Judicial Voter Guide that explains the functions of the appellate courts and the laws concerning the election of appellate judges, the purpose and function of the Public Campaign Financing Fund, and the laws concerning voter registration. The Board shall distribute the Guide to as many voting-age individuals in the State as practical, through a mailing to all residences or other means it deems effective. The distribution shall occur no more than 28 days nor fewer than seven days before the primary and no more than 28 days nor fewer than seven days before the general election.

(b) Candidate Information. – The Judicial Voter Guide shall include information concerning all candidates for the Supreme Court and the Court of Appeals, as provided by those candidates according to a format provided to the candidates by the Board. The Board shall request information for the Guide from each candidate according to the following format:

(1) Place of residence.
(2) Education.
(3) Occupation.
(4) Employer.
(5) Date admitted to the bar.
(6) Legal/judicial experience.
(7) Candidate statement, limited to 150 words. Concerning that statement, the Board shall send to the candidates instructions as follows: 'Your statement may include information such as your qualifications, your endorsements, your ratings, why you are seeking judicial office, why you would make a good judge, what distinguishes you from your opponent(s), your acceptance of spending and fund-raising limits to qualify to receive funds from the Public Campaign Financing Fund, and any other information relevant to your candidacy. We will correct incidental errors of spelling, grammar, and punctuation which might prejudice the candidate's statement unfairly or confuse voters. We will make no changes to the content of any statement which would alter the

meaning or substance of the statement. The State Board of Elections will reject any portion of any statement which it determines contains obscene, profane, or defamatory language.'

"**§ 163-278.70. Civil penalty.**

In addition to any other penalties that may be applicable, any individual, political committee, or other entity that violates any provision of this Article is subject to a civil penalty of up to ten thousand dollars ($10,000) per violation or three times the amount of any financial transactions involved in the violation, whichever is greater. In addition to any fine, for good cause shown, a candidate found in violation of this Article may be required to return to the Fund all amounts distributed to the candidate from the Fund. If the Board makes a determination that a violation of this Article has occurred, the Board shall calculate and assess the amount of the civil penalty and shall notify the entity that is assessed the civil penalty of the amount that has been assessed. The Board shall then proceed in the manner prescribed in G.S. 163-278.34. In determining whether or not a candidate is in violation of this Article, the Board may consider as a mitigating factor any circumstances out of the candidate's control."

SECTION 2. G.S. 163-278.13 reads as rewritten:

"**§ 163-278.13. Limitation on contributions.**

(a) No individual, political committee, or other entity shall contribute to any candidate or other political committee any money or make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(b) No candidate or political committee shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, it shall be lawful for a candidate or a candidate's spouse, parents, brothers and sisters to make a contribution to the candidate or to the candidate's treasurer of any amount of money or to make any other contribution in any election in excess of four thousand dollars ($4,000) for that election.

(d) For the purposes of this section, the term "an election" means any primary, second primary, or general election in which the candidate or political committee may be involved, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

(e) This section shall not apply to any national, State, district or county executive committee of any political party. For the purposes of this section only, the term "political party" means only those political parties officially recognized under G.S. 163-96.

(e1) No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee.

(e2) The potential for corruption and its appearance resulting from campaign

contributions is especially problematic in elections of the judiciary, since impartiality is uniquely important to the integrity and credibility of the courts. Accordingly, the following provisions shall apply with respect to candidates for justice of the Supreme Court, judge of the Court of Appeals, judge of the Superior Court, and judge of the district court:

(1) No candidate shall accept, and no contributor shall make to that candidate, a contribution in any election exceeding one thousand dollars ($1,000) except as provided for elsewhere in this subsection.

(2) A candidate may accept, and a family contributor may make to that candidate, a contribution not exceeding two thousand dollars ($2,000) in an election if the contributor is that candidate's parent, child, brother, or sister.

(3) No candidate for justice of the Supreme Court or judge of the Court of Appeals shall accept, and no contributor shall make to that candidate, a contribution during the period beginning 21 days before the day of the general election and ending the day after the general election. This subdivision applies with respect to a candidate opposed in the general election by a certified candidate as defined in Article 22D of this Chapter who has not received the maximum rescue funds available under G.S. 163-278.67. The recipient of a contribution that apparently violates this subdivision has three days to return the contribution or file a detailed statement with the State Board of Elections explaining why the contribution does not violate this subdivision.

As used in this subsection, 'candidate' is also a political committee authorized by the candidate for that candidate's election. Nothing in this subsection shall prohibit a candidate or the spouse of that candidate from making a contribution or loan secured entirely by that individual's assets to that candidate's own campaign.

(f) Any individual, candidate, political committee, referendum committee, or other entity that violates the provisions of this section is guilty of a Class 2 misdemeanor."

SECTION 3. G.S. 105-41(a)(1) reads as rewritten:

"**§ 105-41. Attorneys-at-law and other professionals.**

(a) Every individual in this State who practices a profession or engages in a business and is included in the list below must obtain from the Secretary a statewide license for the privilege of practicing the profession or engaging in the business. A license required by this section is not transferable to another person. The tax for each license is fifty dollars ($50.00).

(1) An attorney-at-law. In addition to the tax, whenever an attorney pays the tax, the Department must give that attorney an opportunity to make a contribution of fifty dollars ($50.00) to support the North Carolina Public Campaign Financing Fund established by G.S. 163-278.63. Payment of the contribution is not required and is not considered part of the tax owed.

...."

SECTION 4. Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-159.2. Designation of tax to North Carolina Public Campaign Financing Fund.**

(a) Allocation to the North Carolina Public Campaign Financing Fund. – To ensure the financial viability of the North Carolina Public Campaign Financing Fund established in Article 22D of Chapter 163 of the General Statutes, the Department must allocate to that Fund one dollar ($1.00) from the income taxes paid each year by each individual with an income tax liability of at least that amount, unless the individual objects. A taxpayer must be given the opportunity to indicate an objection to that allocation in the manner described in subsection (b) of this section. In the case of a married couple filing a joint return, each individual must have the option of objecting to the allocation. The amounts allocated under this subsection to the Fund must be credited to it on a quarterly basis.

(b) Returns. – Individual income tax returns must give an individual an opportunity to object to the allocation of one dollar ($1.00) of the individual's tax liability to the North Carolina Public Campaign Financing Fund. The Department must make it clear to the taxpayer that the dollar will support a nonpartisan court system, that the dollar will go to the Fund if the taxpayer does not mark an objection, and that allocation of the dollar neither increases nor decreases the individual's tax liability. The following statement satisfies the intent of this requirement: 'One dollar ($1.00) will go to the North Carolina Public Campaign Financing Fund to support a nonpartisan court system, unless you object. Your tax remains the same whether or not you object.' The Department must consult with the State Board of Elections to ensure that the information given to taxpayers complies with the intent of this section.

The Department must inform the entities it approves to reproduce the return of the requirements of this section and that a return may not reflect an objection unless the individual completing the return decided to object to the allocation after being presented with the information required by subsection (c) of this section. No software package used in preparing North Carolina income tax returns may default to an objection. A paid preparer of tax returns may not mark an objection for a taxpayer without the taxpayer's consent.

(c) Instructions. – The instruction for individual income tax returns must include the following explanatory statement: 'The North Carolina Public Campaign Financing Fund provides campaign money to nonpartisan candidates for the North Carolina Supreme Court and Court of Appeals who voluntarily accept strict campaign spending and fund-raising limits. The Fund also helps finance educational materials about voter registration, the role of the appellate courts, and the candidates seeking election as appellate judges in North Carolina. One dollar ($1.00) from the taxes you pay will go to the Fund unless you mark an objection. Regardless of what choice you make, your tax will not increase, nor will any refund you are entitled to be reduced.' "

SECTION 5. Article 22C of Chapter 163 of the General Statutes is repealed.

SECTION 6.(a) G.S. 105-269.6 is repealed.

SECTION 6.(b) In order to pay for its costs for the 2002-2003 fiscal year of

programming, design, printing, and other expenses associated with implementing this act, the Secretary of Revenue may draw funds not to exceed one hundred seventy-eight thousand six hundred dollars ($178,600) from the North Carolina Candidates Financing Fund. After drawing those funds, the Secretary of Revenue shall transfer immediately to the North Carolina Public Campaign Financing Fund any remaining funds that were contributed to the North Carolina Candidates Financing Fund pursuant to G.S. 105-269.6 before its repeal by this section. Funds the Secretary of Revenue withdraws but then determines are not needed shall also be transferred to the North Carolina Public Campaign Financing Fund.

SECTION 7. Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

"SUBCHAPTER X. ELECTION OF APPELLATE, ~~SUPERIOR~~ SUPERIOR, AND DISTRICT COURT JUDGES.

"Article 25.

"Nomination and Election of Appellate, ~~Superior~~ Superior, and District Court Judges.

"§ 163-321. Applicability.

The nomination and election of justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice shall be as provided by this Article.

"§ 163-322. Nonpartisan primary election method.

(a) General. – Except as provided in G.S. 163-329, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) Determination of Nominees. – In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. If two or more candidates receiving the highest number of votes each receive the same number of votes, the State Board of Elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the same date as the primary canvass fixed under G.S. 163-188. The canvass shall be conducted in accordance with Article 16 of this Chapter.

(c) Determination of Election Winners. – In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each

received the same number of votes, the State Board of Elections shall determine the winner by lot.

"**§ 163-323. Notice of candidacy.**

(a) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections in the following form, inserting the words in parentheses when appropriate:

Date: _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, ____.

Signed: _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chairman or secretary of the State Board of Elections, or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in his discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate himself shall be invalid.

(b) **(Effective until January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the first Monday in January and no later than 12:00 noon on the first Monday in February preceding the election:

Judges of the superior courts.

Judges of the district courts.

(b) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

Justices of the Supreme Court.
Judges of the Court of Appeals.
Judges of the superior courts.
Judges of the district courts.

(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office shall have the right to withdraw it at any time prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chairman of the board of elections or the supervisor of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident. In issuing such certificate, the chairman or supervisor shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in subsection (b) of this section, or for an office or group of offices described in subsection (b) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~ the candidate seeks election. Votes cast for a candidate shall be effective only for ~~his~~ election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

(g) No person may file a notice of candidacy for superior court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114 unless that person is at the time of nomination a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Article IV, Section 9(1) of the North Carolina Constitution which requires regular Superior Court Judges to reside in the district for which elected.

"§ 163-324. Filing fees required of candidates; refunds.

(a) Fee Schedule. – At the time of filing a notice of candidacy under this Article, each candidate shall pay to the State Board of Elections a filing fee for the office he seeks in the amount of one percent (1%) of the annual salary of the office sought.

(b) Refund of Fees. – If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section withdraws his notice of candidacy within the period prescribed in G.S. 163-323(c), he shall be entitled to have the fee he paid refunded. The chairman of the State Board of Elections shall cause a warrant to be drawn on the State Treasurer for the refund payment.

If any person who has filed a notice of candidacy and paid the filing fee prescribed in subsection (a) of this section dies prior to the date of the election, the personal representative of the estate shall be entitled to have the fee refunded if application is made to the board of elections to which the fee was paid no later than one year after the date of death, and refund shall be made in the same manner as in withdrawal of notice of candidacy.

"§ 163-325. Petition in lieu of payment of filing fee.

(a) General. – Any qualified voter who seeks election under this Article may, in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office with the State Board of Elections.

(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~The~~ If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 10,000 registered voters in the State. If the office is superior court or district court judge, the petition shall be signed by ten percent (10%) of the registered voters of the election area in which the office will be voted for. The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

(a) Names of Candidates Sent to Secretary of State. – Within three days after the time for filing notices of candidacy with the State Board of Elections under the

provisions of G.S. 163-323(b) has expired, the chairman or secretary of that Board shall certify to the Secretary of State the name and address of each person who has filed with the State Board of Elections, indicating in each instance the office sought.

(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.

(c) Receipt of Notification by County Board. – Within two days after receipt of each of the letters of certification from the chairman of the State Board of Elections required by subsection (b) of this section, each county elections board chairman shall acknowledge receipt by letter addressed to the chairman of the State Board of Elections.

"**§ 163-327. Vacancies of candidates or elected officers.**

(a) Death or Disqualification of Candidate Before Primary. – If a candidate for nomination in a primary dies or becomes disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. – If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

"**§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.**

(a) Insufficient Number of Candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. – If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be

permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. – If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law.

"**§ 163-329. Elections to fill vacancy created after primary filing period to use plurality method.**

(a) General. – If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the plurality method as provided in subsection (b) of this section. If a vacancy is created in the office of justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Plurality Election Rules. – Elections under this section shall be conducted using the following rules:

(1) The filing period shall be prescribed by the State Board of Elections, but in no event may it be less than five working days. If a vacancy occurs in a second office in the same superior court district after the first filing period established under the section has closed, the State Board of Elections shall reopen filing for a period of not less than five working days for the office of justice of the Supreme Court, judge of the Court of Appeals, or superior court judge. All persons filing in either filing period shall run as a group and the election results shall be determined by subdivision (3) of this subsection.

(2) When more than one person is seeking election to a single office, the candidate who receives the highest number of votes shall be declared elected.

(3) When more persons are seeking election to two or more offices (constituting a group) than there are offices to be filled, those candidates receiving the highest number of votes, equal in number to the number of offices to be filled, shall be declared elected.

(4) If two or more candidates receiving the highest number of votes each receive the same number of votes, the board of elections shall resolve the tie in accordance with G.S. 163-182.8.

(5) Except as provided in this section, the provisions of this Article apply to elections conducted under this section.

"**§ 163-330. Voting in primary.**

Any person who will become qualified by age or residence to register and vote in the general election for which the primary is held, even though not so qualified by the date of the primary, shall be entitled to register for the primary and general election prior to the primary and then to vote in the primary after being registered. Such person may register not earlier than 60 days nor later than the last day for making application to register under G.S. 163-82.6(c) prior to the primary.

"**§ 163-331. Date of primary.**

The primary shall be held on the same date as established for primary elections under G.S. 163-1(b).

"**§ 163-332. Ballots.**

(a) General. – In elections there shall be official ballots. The ballots shall be printed to conform to the requirement of G.S. 163-165.6(c) and to show the name of each person who has filed notice of candidacy, and the office for which each aspirant is a candidate.

Only those who have filed the required notice of candidacy with the proper board of elections, and who have paid the required filing fee or qualified by petition, shall have their names printed on the official primary ballots. Only those candidates properly nominated shall have their names appear on the official general election ballots.

(b) Ballots to Be Furnished by County Board of Elections. – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

Justice of the Supreme Court.

Judge of the Court of Appeals.

Superior court judge.

District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be

the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

"**§ 163-333:** Repealed by Session Laws 2001-398, s. 15, effective January 1, 2002.

"**§ 163-334. Counting of ballots.**

Counting of ballots in primaries and elections held under this Article shall be under the same rules as for counting of ballots in nonpartisan municipal elections under Article 24 of this Chapter.

"**§ 163-335. Other rules.**

Except as provided by this Article, the conduct of elections shall be governed by Subchapter VI of this Chapter."

SECTION 8. G.S. 163-106(c) reads as rewritten:

"(c) **(Effective January 1, 2003)** Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

Governor

Lieutenant Governor

All State executive officers

~~Justices of the Supreme Court, Judges of the Court of Appeals~~

United States Senators

Members of the House of Representatives of the United States

District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

State Senators

Members of the State House of Representatives

All county offices."

SECTION 9. G.S. 163-106(d) reads as rewritten:

"(d) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are ~~two or more vacancies for Chief Justice and associate justices of the Supreme Court, two or more vacancies for judge of the Court of Appeals, or~~ two vacancies for United States Senator from North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which he seeks nomination. Votes cast for a candidate shall be effective only for his nomination to the vacancy for which he has given notice of candidacy as provided in this subsection."

SECTION 10. G.S. 163-107(a) reads as rewritten:

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which he files under the provisions of G.S. 163-106 a filing fee for the office he seeks in the amount specified in the following tabulation:

Office Sought	Amount of Filing
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All ~~Justices, Judges, and~~ District Attorneys of the General Court of Justice ~~other than superior and district court judge~~	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
County commissioners, if compensated entirely by fees	Ten dollars ($10.00)
Members of county board of education, if compensated entirely by fees	Five dollars ($5.00)
Sheriff, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Clerk of superior court, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Register of deeds, if compensated entirely by fees	Forty dollars ($40.00), plus one percent (1%) of the income of the office above four thousand dollars ($4,000)
Any other county office, if compensated entirely by fees	Twenty dollars ($20.00), plus one percent (1%) of the income of the office above two thousand dollars ($2,000)
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)".

SECTION 11. G.S. 163-107.1(b) reads as rewritten:

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, or any State executive officer, ~~Justice of the Supreme Court or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by ten percent (10%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 10,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

SECTION 12. G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing or by telegram with the Executive Director of the State Board of Elections no later than 12:00 noon on the seventh day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit him to exercise any options available to him within a 48-hour period following the notification:

Governor,
Lieutenant Governor,
All State executive officers,
~~Justices, Judges, or~~ District Attorneys of the General Court of Justice, ~~other than superior and district court judges,~~
United States Senators,
Members of the United States House of Representatives,
State Senators in multi-county senatorial districts, and
Members of the State House of Representatives in multi-county representative districts."

SECTION 13. G.S. 163-123(g) reads as rewritten:

"(g) Municipal and Nonpartisan Elections Excluded. – This section does not apply to municipal elections conducted under Subchapter IX of Chapter 163 of the General Statutes, and does not apply to nonpartisan elections except for ~~superior court judge~~ elections under Article 25 of this Chapter."

SECTION 14. G.S. 163-165.6(b)(3) reads as rewritten:

"(3) Partisan ~~offices~~ offices, regardless of the size of the constituency, shall be listed before nonpartisan offices."

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

SECTION 16. Section 1 of this act is effective when it becomes law, provided that distributions from the Fund shall begin in the 2004 election year. Section 2 becomes effective January 1, 2003. Section 3 becomes effective July 1, 2003. Sections 4 and 6(a) become effective for taxable years beginning on or after January 1, 2003. Section 5 becomes effective January 1, 2003. Sections 7 through 13 become effective with respect to primaries and elections held on or after January 1, 2004. Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE BILL 1054:
Judicial Campaign Reform Act

BILL ANALYSIS

Committee:	House Finance Committee	**Introduced by:**	Senator Gulley
Date:	August 21, 2002	**Summary by:**	Gilkeson/Cohen
Version:	S1054-CSRR-73[v.15]		Staff Attorneys

SUMMARY: Senate Bill 1054 would provide, beginning in 2004, what is intended to be full public financing in the general election for Court of Appeals and Supreme Court candidates who accept fundraising and spending limits. The chief funding mechanisms would be a voluntary $50 contribution requested from lawyers at the time they pay their privilege license tax and a $1 "reverse check-off" on individual State income tax forms. Under the "reverse check-off," $1 of a taxpayer's tax liability would be designated to the Fund rather than to the State's General Fund unless the taxpayer made the decision to object on the tax return.

The bill would also lower the contribution limit for all judicial candidates to $1,000. In another major change to begin in 2004, Supreme Court and Court of Appeals candidates would be elected in nonpartisan primary and election method.

CONDITIONS FOR PARTICIPATION. Beginning in 2004, general election candidates for Supreme Court and Court of Appeals can receive a set amount of public funding if they voluntarily meet these conditions:

- Before filing a declaration of intent to enter the program, must not raise or spend more than $10,000 on campaign after the beginning of the year before the election.
- After declaring intent to participate, raise the minimum in qualifying contributions as follows:
  1. Qualifying contributions must come in amounts between $10 and $500 each.
  2. They must come from North Carolina registered voters only.
  3. They must come from at least 350 contributors.
  4. They must be raised during the qualifying period, which begins September 1 of the year before the election and ends primary day.
  5. The sum of the qualifying contributions must remain within a range pegged to a multiple of the filing fee for the office. The minimum is about $33,000 for Court of Appeals judges and the maximum is about $69,000 for Supreme Court justices. ***See Chart for details.*** Any excess contribution must be returned to the donor.
- Spend only up to the qualifying contribution cap during the primary, raised from qualifying contributions and personal/family contributions (up to $1,000 per family member).
- Agree to spend only public funds and remaining qualifying donations in the general election.

Candidates who hold office as statewide appellate judges or who were elected to the statewide appellate bench within the past 4 years are not required to raise the minimum qualifying contributions. They are deemed to have already shown that they have support. They are, however, required to abide by the spending limits and contribution limits.

BENEFITS OF PARTICIPATION. If the State Board of Elections certifies a candidate as meeting these conditions, the candidate can receive from the Fair Election Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about $67,000 -- up to a total of about $135,000 in rescue funds.
- In the general election, an initial amount of 175% of the position's salary for Supreme Court candidates ($201,300) and 125% of the salary for Court of Appeals candidates ($137,500).
- In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount.

OTHER PROVISIONS IN SENATE BILL 1054:

- Uses mixture of a voluntary $50 contribution requested from attorneys at the time they pay their privilege license tax, effective July 1, 2003; leftovers from Candidates Financing Fund; voluntary contributions generally; and a new $1 reverse check-off on the State individual income tax form, effective for the tax years beginning January 1, 2003.
- Provides a non-partisan primary and election system for election of appellate judges, the same as that now in place for Superior and District Court judges. Some cities use the same method for municipal offices. The nonpartisan primary is used to narrow the field of candidates to twice the number to be elected. (If only two candidates file, there is no contested primary.) The general election is between the candidates left after the primary.
- Lowers contributions limits to $1,000 for all judicial candidates. Family members may give $2,000
- Provides in primary and general election a Voter Guide on all candidates in appellate judge contests.
- Provides substantial rescue money to a certified candidate who is hit with spending by an opposing non-certified candidate and/or by independent-expenditure activity that exceeds the spending limit accepted by the certified candidate. The bill provides for expedited reporting to make the rescue provision work.
- To address last-minute "surprise attack," embargos fundraising in the 21 days before Election Day by a non-certified candidate who opposes a certified candidate who has not maxed out on getting rescue money. The non-certified candidate can still add more money from personal funds.
- Provides a civil fine of up to $10,000 for a violation of the Article, or up to treble the amount of any financial transactions involved in the violation, whichever is greater. A certified candidate in violation may have to give back all money received from the Fund.

Chart – How Amounts Are Calculated in PCS for Senate Bill 1054

Office	Salary	Filing Fee *(1% of salary)*	Minimum Amount to be Raised in Qualifying Contributions *(30x filing fee)*	Maximum Amount to be Raised in Qualifying Contributions * *(60x filing fee)*	Distribution Amount – Court of Appeals # *(125x filing fee)*	Distribution Amount – Supreme Court # *(175x filing fee)*
Supreme Court **	$115,000	$1150	$34,500	$69,000 *		$201,300 #
Court of Appeals	$110,000	$1100	$33,000	$66,000 *	$137,500 #	

** Numbers slightly higher for Chief Justice.

* This is also the limit on spending during primary, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $132,000 for Court of Appeals and $138,000 for Supreme Court candidate.

This is also the limit on spending during the general election, unless rescue money is triggered. Total rescue money is capped at twice the amounts above: $275,000 for Court of Appeals to $402,600 for Supreme Court candidate.

SUMMARY OF CHANGES TO SENATE PASSED SB 1054: ***The PCS presented today makes the following changes to the bill the Senate passed last November 20:***

1. ***Nonpartisan Primary and Election.*** *It changes the method of electing Supreme Court justices and Court of Appeals judges to a nonpartisan primary and election, rather than the partisan primary and non-partisan general election that were in the Senate-passed bill. The change follows the same pattern as the election of Superior and District judges. It also removes from the bill the authority for the political party that nominated a candidate to spend up to 20% of the candidate's base level of public financing on a ticket campaign.*

2. ***No Petition.*** *It removes the requirement that qualifying candidates must collect 2,000 names on a petition.*

3. ***Voter Guide During Primary.*** *It provides for distribution of the Judicial Voter Guide in the primary as well as the general election. The State Board of Elections is also given more discretion in distributing the Guide.*

4. ***Higher Threshold Number for Qualifying Contributors.*** *It raises from 250 to 350 the number of registered voters from whom qualifying contributions must be raised. (Page 3, line 43.)*

5. ***Higher Dollar Ceiling for Qualifying Contributions.*** *It raises the multiplier for maximum qualifying contributions from 45 to 60.*

6. ***Higher Dollar Floor for Qualifying Contributions.*** *It raises the multiplier for minimum qualifying contributions from 20 to 30.*

7. ***Clearer Rules for Measuring of Opposition Spending to Trigger Rescue Funds.*** *It clarifies that to calculate rescue funds, spending by the single highest-spending noncertified opposition candidate is used rather than the sum of spending by all noncertified opposition candidates. However, for independent expenditures, the sum of all such expenditures is the measure.*

8. ***More Specific Expedited Reporting of Opposition Money.*** *It specifies that if a non-certified candidate or independent expender reaches a money flow that triggers a 24-hour filing duty, that entity shall thereafter file a report after raising or spending every $1,000 increment. Senate passed S1054 required the same entities to follow an expedited reporting schedule that would have been designed by the State Board.*

9. ***Change in Contribution Limits for all Judicial Candidates.*** *It sets the contribution limit at $1,000 per donor per donee per election for all judicial candidates – Supreme Court, Court of Appeals, Superior Court, District Court. A special $2,000 limit is reserved for family members of the candidate. The Senate-passed bill set a $500 limit for appellate judge candidates only. It left the trial court judges at the standard $4,000 limit.*

10. ***Reverse Check-off Changes.*** *It changes the reverse check-off from a "For" or "Against" choice to one in which the dollar goes to the Fund unless the taxpayer objects. At the request of the Department of Revenue, it does not prescribe exact wording on the return. It also adds a provision that prohibits software packages that default to an objection on the Fund check-off.*

11. ***Funding Wording.*** *It changes the wording of the funding, to make it clear that no money is to be spent from the General Fund, and to enable the Department of Revenue and the State Board of Elections to use the receipts of the Candidates Financing Fund more quickly*

12. ***Rescue Money, Independent Expenditures, and Issue Ads.*** *It clearly states that the State Board has authority to adopt procedures for distributing rescue money that further the purpose and avoid the subversion of rescue money. It also directs the Advisory Council to study and report on how to address activities that could undermine the program, including sham issue ads.*

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 19, 2002

TO: House Finance

FROM: Marilyn Chism and Michele Nelson
Fiscal Research Division

RE: PCS-SB 1054-CSRR-73[v.7]

The fiscal analysis for this bill begins on page 2.

FISCAL IMPACT

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

		FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUE						
Fair Elections Fund						
Transfer from Candidates' Financing Fund		$360,323				
Privilege License/Voluntary Contribution			Up to $576,250 annually but see assumptions and methodology			
42.4 % Taxpayer Designation		$0	$2,150,767	$2,150,767	$2,150,767	$2,150,767
OR						
8.00 % Taxpayer Designation		$0	$405,805	$405,805	$405,805	$405,805
General Fund						
42.4 % Taxpayer Designation To Fair Elections Fund		$0	($2,150,767)	($2,150,767)	($2,150,767)	($2,150,767)
OR						
8.00 % Taxpayer Designation		$0	($405,805)	($405,805)	($405,805)	($405,805)
EXPENDITURES						
Fair Elections Fund						
Public Financing			$680,000	$0	$1,912,800	$0
State Bd. of Elections		$37,200NR	$0	$0	$0	$0
		$56,619	$806,619	$806,619	$806,619	$806,619
POSITIONS:			1	1	1	1
Candidates' Financing Fund						
Department of Revenue		$178,600	$0	$0	$0	$0

	FY 2007-08	
REVENUES		
Fair Elections Fund		
Transfer from Candidates' Financing Fund	**$0**	
Privilege License/Voluntary Contribution		Up to $576,250 annually but see assumptions and methodology
42.4% Taxpayer Designation	**$2,150,767**	
OR		
8.00 % Taxpayer Designation	**$405,805**	
General Fund		
42.4 % Taxpayer Designation to F/E Fund	**($2,150,767)**	
OR		
8.00 % Taxpayer Designation to F/E Fund	**($405,805)**	
EXPENDITURES		
Fair Elections Fund		
Public Financing	**$2,189,200**	
State Bd. of Elections	**$806,619**	
POSITIONS:	**1**	

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Elections, Department of Revenue

EFFECTIVE DATE: 2004 Elections for Supreme Court, Court of Appeals

BILL SUMMARY[1]:

Beginning in 2004, the bill would provide what is intended to be full public financing for candidates in the general election for Court of Appeals and Supreme Court who accept fundraising and spending limits. The chief funding mechanisms would be a $50 voluntary contribution requested from lawyers who pay a privilege license fee and a $1 designation on the State income tax form (unless the taxpayer says against). This bill also requires the State Board of Elections to publish and distribute a judicial voters' guide to every residence before the primary and before the general election.

[1] Adapted from Committee Counsel Summary

ASSUMPTIONS AND METHODOLOGY:

NC Fair Elections Fund.

This bill establishes the NC Fair Elections Fund (Fund) from which candidates for the Supreme Court and the Court of Appeals may choose to have their campaigns financed. If the State Board of Elections certifies a candidate to participate in public financing, the candidate can receive from the Fair Election Fund:

- In a contested primary, rescue funds to match opposition spending that exceeds about $67,000 -- up to a total of about $135,000 in rescue funds. A candidate in a second primary may receive the same amount of rescue funds for the second primary campaign.
- In the general election, an initial amount of 175% of the position's salary for Supreme Court candidates ($115,336 * 1.75 = $201,800) and 125% of the position's salary for Court of Appeals candidates ($110,530 * 1.25 = 138,200 rounded to the nearest hundred).
- In the general election, rescue funds to match opposition spending that exceeds the initial award, up to twice that amount.

Based on the base distribution per candidate and the number of seats for the Supreme Court and the Court of Appeals that are up for election in 2004, 2006, and 2008, the amount needed to fund publicly financed campaigns for the appellate judiciary for each of those election years is noted in the table below, assuming 100% participation.

SUMMARY OF FUNDS REQUIRED FOR DISTRIBUTION TO CANDIDATES CERTIFIED TO PARTICIPATE IN PUBLICLY FINANCED CAMPAIGNS

		2004			2006			2008		
	Base	Seats	Cand.	Funding	Seats	Cand.	Funding	Seats	Cand.	Funding
Supreme Court	$201,800	1	2	$403,600	2	4	$807,200	2	4	$807,200
Court of Appeals	$138,200	1	2	$276,400	4	8	$1,105,600	5	10	$1,382,000
Total for Appellate Judiciary				**$680,000**			**$1,912,800**			**$2,189,200**

Please note that in the above calculations, no assumptions were made about how much additional public funding would be required if privately funded candidates exceeded spending limits and triggered the release of matching or "rescue" funds to publicly funded candidates. However, it should be noted that if less than 100 % of the candidates opt for public funding, the money anticipated for their campaigns, as indicated in the table above, would be available for rescue funds.

The Fiscal Research Division believes the formula is consistent with the requirements of the bill and the estimates for the amount needed for the NC Fair Elections Fund appear reasonable. The bill requires the SBE to advise the Joint Legislative Commission on Governmental Operations of the funds received and the expected needs of the Fund during the next election cycle. The first report is due before October 1, 2003 and subsequent reports are due every two years thereafter.

The bill specifies that the source of funding will be unspent NC Fair Elections Fund grants; monies transferred from the NC Candidates' Financing Fund, tax return designations of $1 from each taxpayer that does not oppose making the designation, and voluntary donations. The bill also requires that a $50 voluntary contribution for the Fund be requested from attorneys who pay the $50 privilege license.

This bill abolishes the Candidates' Financing Fund that was established by G.S. § 105-269.6. Currently, that fund has a balance of $538,923. The bill authorizes the Department of Revenue (DOR) to draw up to $178,600 from the Candidates' Financing Fund to cover its nonrecurring cost associated with this bill. The bill also directs DOR to immediately transfer the remaining balance, estimated to be $360,323, to the new NC Fair Elections Fund.

The bill provides that each taxpayer will be deemed to make a $1 designation to the Fund unless they indicate that they are against making the designation. Currently, taxpayers may designate $1 of their liability for the NC Political Parties Fund; however, in tax year 2000 only 399,566 or 8 % of the 5,072,563 individual taxpayers (including single and joint filers) chose to make the designation. Data indicates that 57.6% of the tax returns were prepared by paid preparers. It is reasonable to believe that a paid preparer will require the taxpayer to make a designation and indicate accordingly on the return (i.e., "for," "against," or "no opinion"). Based on the low number (8%) of individual taxpayers who have affirmatively designated a portion of their tax liability for the Political Parties Fund, the Fiscal Research Division (FRD) believes that those who are required to make a designation (57.6%) are likely to indicate that they are against making a designation. The remaining 42.4% who are self-preparers may indicate "for" or "no opinion" or may make no selection at all, thereby indicating their desire to designate. If only 42.4% of the 5,072,563 individual taxpayers make the designation, $2,150,767 of the tax liability will be designated for the Fair Elections Fund (5,072,563 * .424 * $1= $2,150,767). However, because of the low number of taxpayers who currently affirmatively decide to designate $1 for the Political Parties Fund and considering the expanded use of tax preparation software that will prompt self-preparers to respond to the designation questions, FRD believes that even fewer than 42.4 % will indicate "for" or "no opinion." If FRD assumes that the affect of having a "reverse check-off" designation would not be significantly different than the current affirmative check-off designation because of the use of paid preparers and tax preparation software, it is possible that only 8% would choose to make the designation. If such were the case, the tax liability designated for the Fair Elections Fund would be approximately $405,805 (5,072,563 * .08 * $1 = $405,805). We believe the number of taxpayers who would designate $1 of their tax liability to the Fund is between 42.4% and 8%. Because we have no basis of estimating that number, we have included a range of estimated revenue.

The bill provides that each attorney who is required by N.C. G.S. § 105-41 to obtain a $50 privilege license will be requested to pay an additional $50 to fund the NC Fair Elections Fund. Based on July 1, 2002 renewals and license applications, 11,525 attorneys pay the $50 privilege license fee. The NC Bar Association believes that a high percentage of the attorneys will make the $50 voluntary contribution. However, neither the NC Bar Association nor the Fiscal Research Division has a reasonable estimate of what that percentage is. If 100% of the attorneys who pay the privilege license fee choose to make the $50 contribution, the total revenue to the NC Fair Elections Fund from this source would be $576,250 annually.

Fiscal Research has no basis for estimating the amounts, if any, that will come from unspent grants from the NC Fair Elections Fund and voluntary donations.

A summary of the required funding for candidates and the estimated revenue is noted in the tables below. Based on these estimates, it appears that revenue from taxpayer designations would be sufficient to cover the cost of the elections for the Appellant Judiciary if 42.4% of the taxpayers make the designations. Cumulative revenue collections over the five-year period beginning with fiscal year 2003-2004 would be sufficient to cover the funding needed for the 2004, 2006, and 2008 elections even if only 8% of the taxpayers make the designation, assuming that 100% of the attorneys elected to make the $50 voluntary contribution.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 42.4% Designation

Election	Fiscal Year	Transfer from Candidates' FF	Taxpayer Designation	Privilege License *	Total Revenue	Required Funding
2004	2003-04	$360,323	$2,150,767	$576,250	$3,087,340	$680,000
	2004-05	$0	$2,150,767	$576,250	$2,727,017	$0
2006	2005-06	$0	$2,150,767	$576,250	$2,727,017	$1,912,800
	2006-07	$0	$2,150,767	$576,250	$2,727,017	$0
2008	2007-08	$0	$2,150,767	$576,250	$2,727,017	$2,189,200
Total		**$360,323**	**$10,753,834**	**$2,881,250**	**$13,995,408**	**$4,782,000**

* Assumes 100% election by attorneys (11,525) to pay $50 increase in privilege tax.

Analysis of Revenue and Required Funding for Candidates by Fiscal Year Based on 8% Designation

Election	Fiscal Year	Transfer from Candidates' FF	Taxpayer Designation	Privilege License *	Total Revenue	Requi Funding
2004	2003-04	$360,323	$405,805	$576,250	$1,342,378	$680,000
	2004-05	$0	$405,805	$576,250	$982,055	$0
2006	2005-06	$0	$405,805	$576,250	$982,055	$1,912,800
	2006-07	$0	$405,805	$576,250	$982,055	$0
2008	2007-08	$0	$405,805	$576,250	$982,055	$2,189,200
Total		**$360,323**	**$2,029,025**	**$2,881,250**	**$5,270,598**	**$4,782,000**

* Assumes 100% election by attorneys (11,525) to pay $50 increase in privilege tax.

Please note that the estimates assume the number of taxpayers would remain constant and there would be no change in the base level based on salary increases.

Also, Fiscal Research estimates that between 8% and 42.4% of taxpayers would designate $1 of their tax liability to the Fund. Any funds that would be designated for the Fund would normally go to the General Fund. Thus, any amount designated for the Fund would decrease General Fund availability.

Administration of the Legislation

The bill provides that the administrative and enforcement cost of the Board related to the NC Fair Elections Fund is to be a cost of the Fund. It also provides that the cost of the Department of Revenue is come from the Candidates' Financing Fund before it is abolished.

State Board of Elections:

This bill requires the State Board of Elections (SBE or Board) to administer the Judicial Campaign Reform Act (Act). The Board estimates that administration of the Act will require changes to their campaign reporting system to facilitate capture of income and expenditures by type as well as by election (i.e., primary vs. general). For example, the bill requires participating candidates to obtain qualifying contributions and it would limit the expenditure of participating candidates. The current system would have to be modified to capture the income and expenditure data. The estimated cost for modifying the system is $31,200 nonrecurring.

The Board also estimates that they will need to hire a full-time accounting employee at a grade 77 (Accountant III) to manage the fund. The minimum salary for a grade 77 position is $43,219 and the benefits total $8,400 for a total of $51,619. The nonrecurring operating cost is estimated to be $6,000 for office furniture and equipment and computer equipment.

The bill establishes a 5-member Advisory Council for the Fair Elections Fund that would be responsible for advising the Board on the rules and opinions it adopts for the enforcement and administration of this Act and the funding needs of the NC Fair Elections Fund. The Board estimates that the expenditures of the Council will include the per diem and travel cost incurred to attend meetings scheduled to accomplish its statutory responsibilities. The members will receive the legislative per diem pursuant to G.S. 120-3.1, which is currently $104 plus mileage at 29 cents per mile. Assuming the Council meets quarterly for 2 days each meeting, the estimated cost is approximately $5,000 ($104/day * 2 days for each meeting * 5 members * 4 meetings/year) including an estimate for mileage.

The bill also requires the State Board of Elections to publish and distribute a voters' guide to each residence in the state before both the primary and general elections. Per the 2000 Census, there are 3.1 million households in the state. The Board estimates that it will cost them between $750,000 and $1,500,000 to produce and distribute the guide. This would include cost for printing which is estimated to be $734,980 for 3 million copies of a 24-page guide as well as the cost for postage and for temporary help to prepare the guides for mailing or contracting with a mailing house. Because the estimate lacked sufficient detail, the Fiscal Research Division cannot determine the reasonableness of their estimate. However, based on information on the costs to other states to publish the guide, the Fiscal Research Division estimates that the guide for each election can be published and distributed to each household for no more than $750,000 for a total of not more than $1.5 million every two years for the primary and general election guides. (The state of Washington publishes and distributes approximately 3 million copies of its 48-page guide for approximately $740,000.)

In addition to the administrative cost discussed above, the Board may incur cost to hear any complaints that present themselves as a result of implementation of this bill. The Board estimates that, for each hearing held during a regularly scheduled meeting, it would incur $650

(excluding the cost of staff-time) in administrative expenses for scheduling, sending certified or special delivery of notices or subpoenas, preparing the correspondence and case file, and the cost of a court reporter. Fiscal Research believes the number of additional complaints will be minimal and therefore, has not included the cost of hearings in the fiscal impact.

The total cost to the State Board of Elections for administering the Judicial Campaign Reform Act is estimated to be $37,200 nonrecurring for modifying the campaign reporting system ($31,200) and start-up cost for additional accounting personnel ($6,000) and $56,619 recurring for the salary and benefits for the accounting personnel ($51,619) and for the meetings of the Advisory Council ($5,000). Though the bill is effective for the 2004 election of the Appellate Judiciary races, the Board is expected to determine the needs of the NC Fair Elections Fund by August 1, 2003 and to report to the Joint Legislative Commission on Governmental Operations by October 1, 2003. The Fiscal Research Division estimates that the Board would begin to prepare for the 2004 election immediately and thus, estimates that they would incur these expenditures beginning in Fiscal Year 2002-2003. Additionally, every even calendar year, the Board will incur approximately $1.5 million for publishing and distributing a judicial voters' guide before both the primary and general elections. Because the primary election usually occurs in the fiscal year that ends on June 30th of the even year and the general election occurs in the subsequent fiscal year that begins on July 1st of that even year, the cost of the voter's guide will be spread over two fiscal years. Thus, each fiscal year, the Board is expected to incur approximately $750,000 to publish the voters' guide. Please note also, that though our estimate is the same for each guide, the cost for the voters' guide for the general election is likely to be less than the cost of the guide for the primary because there will be fewer candidates for the general election.

Department of Revenue:
To comply with the directives of the legislation would require non-recurring funding to implement changes in several areas. An estimated $178,600 is needed to make modifications to the Integrated Tax Administration System (ITAS) and to revise the individual income tax forms -- D400EZ and D400. On the processing side, the Department will have to make significant changes to the privilege license tax module for ITAS to be able to process a voluntary payment and split money into separate pots. The estimated non-recurring cost of these computer changes is $137,600, which assumes contract programmer payments of $80/hour and includes all costs for requirements, design, development, testing, and changes to notices. The form will have a line for the tax and a line for the contribution. If a return is filed indicating a contribution but the payment covers only the tax, the Department will apply the payment to tax and will not notify the taxpayer of any deficiency.

Also the additions to the forms required by this legislation will impact the department's forms processing. To be able to capture the information, account for it, and report it accurately, the department estimates a cost of $36,000. A review of the tax forms indicates there is not enough space on the D400EZ or the computer generated versions of the D400 to put another block as large as the Political Parties Financing Fund block (which this would require because of the separate listings of choices for each spouse). If this were required, it would be necessary to develop three-page forms for these returns. This would result in a significant cost increase as the result of processing three pages as opposed to two for several million tax returns. At this time there is not an estimate for this revision to the tax forms. The department assumes there are

enough vacant ELF (electronic filing) fields to incorporate these changes. The last revision is the deletion of the Campaign Financing Fund check-off that will require $5,000 of processing changes.

Finally in regards to the new check-off for the North Carolina Fair Elections Fund, there are several considerations. First, this concept is contrary to the other contributions and check-offs. Those require a decision to participate. This contribution requires a decision to not participate. Second, the proposed law micromanages the tax form and requires two verbatim sentences to be repeated on the form. The last item that was mandated on the form (highlighting of information in a contrasting color) could not be carried out because forms come from software packages and from websites where the department has no control over the color. Over 70% of the forms come from software packages now. Taxpayers that use these packages do not read the form and fill it out. They answer questions posed by the computer. Printing the sentence on the form is therefore a waste of space for more than 70% of the forms.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

House Committee on Finance

Minutes
August 27, 2002

The House Committee on Finance met on Tuesday, August 27, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Hurley, McCombs, McMahan, Morris, Pope, Rayfield, Weiss, Willingham, Womble, Baddour, and Cunningham. Also present were Sergeant-at-Arms staff Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included Trina Griffin, Martha Walston, Richard Bostic, and Karen Cochran-Brown; and Committee Assistants Nancy Brantley, Blinda Edwards, and Joyce Harris.

Chairman Allen opened the meeting and welcomed page Grayson Cave from Wake County, sponsored by Representative Minor, who would assist the Committee today.

The Chairman announced that the first order of business would be Senate Bill 104, A BILL TO BE ENTITLED AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS. Upon motion of Rep. Buchanan, the Proposed Committee Substitute for SB 104 was adopted for discussion, and Rep. Culpepper was recognized to explain the Bill.

Representative Culpepper explained that the Bill would reauthorize regulation of deferred deposit transactions, which were previously authorized under provisions of the Check Casher Act that expired on August 31, 2001. He pointed out that this Bill would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans. He pointed out that the check-cashing industry is now operating in the state totally unregulated, and several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. Federal law preempts North Carolina from regulating national banks. This Bill would reinstate the $300 limit for loans and 15% of loan amount fee that would be charged in connection with the transaction. The transaction has to be completed before another loan is created, and borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments.

Representative Baddour was recognized to speak on his Amendment, which he stated was essentially the same bill that was passed out of subcommittee last year. He highlighted what he thought were three major differences between the Bill as presented and his Amendment:

- The Amendment restricts rollovers or repeat transactions to four per year per customer. There is no limit in the original Bill as presented.
- Although both bills provide that a customer cannot receive a new loan if they have more than $300 in outstanding loans, under his Amendment, to track the loans, the Commissioner of Banks would set up a database that would be paid for through fees that the industry pays.
- The Amendment would provide 60 days for the customer to pay back the loan. Without the Amendment, the Bill provides for a 10-day minimum to repay the loan, which Representative Baddour felt would have a major effect on the interest paid by the borrower.

After some discussion by the Committee members, Chairman Allen recognized the following persons who spoke on the Bill and Amendment:

- Pat Kelly, Senior Counselor with the Naval Marine Corp Relief Society, who expressed his support of the Bill.
- Dick Hatch, AARP, who supported the Amendment.
- Ellen Schloemer, Director of Social Ministries with St. Raphael's Catholic Church, who supported the Amendment.
- Stella Adams, Executive Director of the N.C. Housing Center, who supported the Amendment.
- Rob Schofield, Attorney with the N.C. Justice Center, who supported the Amendment.
- Peter Skillern, Executive Director of the Community Reinvestment Association, who supported the Amendment.
- Martin Eaks, CEO of Self-Help Credit Union, who supported the Amendment.

Because of time constraints, Chairman Allen announced that the Committee would meet again fifteen minutes after Session adjourned to continue debate on SB 104. He adjourned the meeting at 9:50 A.M.

Respectfully submitted,

Representative Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

PCS for Senate Bill 104
Visitor Registration Sheet

AGENDA

House Finance Committee

August 27, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 104 **PCS: REGULATE DEFERRED DEPOSIT - Rep. Culpepper**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Finance — Name of Committee

Aug 27, 2002 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Peter Skillern	CRA-NC
Rob Schofield	NC Justice Center
Ken Wescott	Sprint
Letitia Withrow	NC StateWatch
Jenny Byrd	NC Check Cashers Assn.
[illegible]	"
[illegible]	"
Jamy Burley	LBA
Michelle Frazier	NC Bar Ass'n
Don Taylor	AARP

VISITOR REGISTRATION SHEET

Finance — Aug 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	Poyner + Spruill
SUSAN LUPTON	COALITION FOR RESPONSIBLE LENDING
Martin Eakes	Self-Help Credit Union
Fred Yates	NC NAACP
Phyllis Lisk	Catholic
Malcolm White	CRL
Vicki Woodward	CFSA
Tony Colletti	CFSA
David Barnes	Poyner + Spruill
Dexter Joyner	AARP
Helen Savage	AARP

VISITOR REGISTRATION SHEET

Finance — Aug 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	KCRA
Kirk Dunton	NCPIRG

Chairman's Copy

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 104

Defferred

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

S104-ARO-59 [v.1]

1. Roll over - limited to 4 per yr - notice cutoff per Bill

2. Com. Bks, data base

3. Repayment term 60 day min & 45 days fee + 30 close.

4. Could regulate # of transactions per year.

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative Baddour

moves to amend the bill on page 1, line 5 through page 5, line 32, by deleting the lines and substituting the following:

"**SECTION 1.** G.S. 53-275 reads as rewritten:

'**§ 53-275. Definitions.**

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

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(1a) "Cash advance" means the amount of cash or its equivalent, whether paid by direct payment or by electronic credit or deposit, provided to a customer in a deferred deposit transaction.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. "Check-cashing service" shall also mean any person or entity engaged in the business of making, originating, processing, arranging, or accepting or transmitting applications for deferred deposit transactions, whether the transactions are done directly for the person's or entity's own account or in conjunction with, or as agent for, another person or entity.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.
(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a customer in return for a payment device and agrees, for consideration, to hold the payment device for a period of days prior to deposit, presentment, or withdrawal.
(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.
(5a) "Payment device" means an electronic or written check, draft, money order, authorization for an electronic debit or withdrawal, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable.
(6) "Person" means an individual, partnership, association, or corporation.'

SECTION 2. G.S. 53-276 reads as rewritten:

'**§ 53-276. License required.**

No person or other entity may ~~engage in the business of cashing checks, drafts, or money orders for consideration~~ operate a check-cashing service without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a ~~check~~ check, electronic credit or deposit, or other currency equivalent instead of currency when cashing payment ~~instruments.~~ devices.'

SECTION 3. G.S. 53-277 reads as rewritten:

'**§ 53-277. Exemptions.**

(a) This Article shall not apply to:
(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and~~ state, except that the following shall apply to deferred deposit transactions under G.S. 53-281.1 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:
a. G.S. 53-281.1(a), (b), (e), (f), (g), (h), (i), (j), (k), and (l).

b. G.S. 53-283(a)(3), (5), (7), (8), (9), (10), (11), and (12).
c. G.S. 53-283(b).

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.'

SECTION 4. G.S. 53-278 reads as rewritten:

'**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.
(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.
(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.
(4) The addresses of the locations of the business to be licensed.
(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. If the applicant intends to offer deferred deposit transactions under G.S. 53-281.1, the

application fee shall be five hundred dollars ($500.00) and the investigation fee shall be one thousand dollars ($1,000). These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. For any licensee who offers deferred deposit transactions under G.S. 53-281.1, the renewal fee shall be five hundred dollars ($500.00) plus a two hundred fifty dollar ($250.00) fee for every branch location certificate.

(e) The Commissioner shall be authorized to assess licensees for any costs incurred by the Commissioner as a result of implementation of this Article.

(f) The Commissioner is authorized to allocate up to one-half the sums collected from application and licensing fees under this Article for consumer education and research, to be conducted by the Commissioner or another State agency, related to deferred deposit transaction services under G.S. 53-281.1.'

SECTION 5. G.S. 53-280 reads as rewritten:

'**§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.**

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or draft or five dollars ($5.00), whichever is greater, for personal ~~checks~~checks or drafts.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check or draft unless the account from which the check or draft being presented is drawn is legitimate,

open, and active. Except as provided by ~~G.S. 53-281(a),~~ G.S. 53-281.1(a), any licensee who cashes a check or draft for a fee shall deposit the check or draft not later than three business days from the date the check or draft is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.'

SECTION 6. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new section to read:

'**§ 53-281.1. Deferred deposit transactions.**

(a) A deferred deposit transaction shall have a minimum term of 60 days from the date of the transaction.

(b) The face amount of any deferred deposit payment device cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each deferred deposit transaction shall be documented by a written agreement that has been signed by the customer and the licensee. The licensee shall provide the customer with a copy of the agreement at the time it is executed. The written agreement shall contain a statement of the cash advance and the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR) consistent with the requirements of the federal Truth in Lending Act. The written agreement shall contain the following specific disclosures:

(1) The address and telephone number of the Office of the Commissioner of Banks with a statement that the licensee is licensed by the Commissioner of Banks and that the customer may file a complaint with the Commissioner if the customer believes the licensee has acted improperly or unlawfully either in the transaction or in the collection process.

(2) That the customer may not be prosecuted for a worthless check violation if the check is returned for insufficient funds but the

customer may be liable to the licensee for no more than one fifteen dollar ($15.00) worthless check fee.

(3) That the customer has the right to contact a consumer credit counseling service for counseling or a debt management repayment program if the customer is unable to pay on the deferred deposit transaction when it becomes due.

(4) That the customer has the right to rescind the delayed deposit transaction at no cost to the customer on or before the close of the following business day.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or deferred deposit payment device in excess of fifteen per cent (15%) of the cash advance. A licensee shall not charge a customer any fees or other consideration related to a deferred deposit transaction unless specifically authorized by this Article.

(e) No payment device cashed under the provisions of this section shall be repaid by the proceeds of another payment device cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any additional consideration, renew or otherwise extend any postdated or deferred payment device. A licensee may agree with its customer at any time to defer deposit or collection of a payment device without additional consideration.

(f) The customer shall have the right to rescind the delayed deposit transaction at no cost to the customer by giving written notice and returning the cash advanced on or before the close of the business day following the date of the deferred deposit transaction.

(g) After May 30, 2003, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who has had four deferred deposit transactions with any licensee or licensees within the previous 12 months. The licensee shall utilize the deferred deposit transaction database described in G.S. 53-291 to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(h) After May 30, 2003, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who would have in the aggregate, including the new transaction, more than three hundred dollars ($300.00) in deferred deposit transactions outstanding with any licensee or licensees. The licensee shall utilize the deferred deposit transaction database to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(i) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506, but the fee shall not exceed fifteen dollars ($15.00) if the check is returned for insufficient funds. Only one fee may be collected or imposed per payment device.

(j) Any deferred deposit transaction made under the terms of this section shall be payable in a lump sum at the end of the term, except that the customer, in the customer's sole discretion, may prepay the obligation in whole or in part without additional charge or fee prior to the end of the term.

(k) No licensee may make, originate, or arrange a deferred deposit transaction unless the licensee maintains a place of business in this State.

(l) Notwithstanding any other provision of State law, no deferred deposit transaction agreement shall include any provision that waives any federal or State constitutional right of customers or limits the remedies of customers available in law or equity, whether acting individually or on behalf of others similarly situated, or their rights to civil discovery or appeal. In addition, no deferred deposit transaction agreement shall require a party to assert any claim against the party who prepared the agreement in a forum that is less convenient, more costly, or more dilatory for the resolution of the dispute than a judicial forum established in this State.

(m) The Commissioner shall prescribe the format and contents of a consumer information sheet or pamphlet to educate consumers about deferred deposit transactions. The informational materials shall include information on the responsible use of deferred deposit transactions, the costs of deferred deposit transactions, the limitations on the number of transactions, and the dollar amount of outstanding checks, the fact that the customer cannot be prosecuted for a deferred deposit insufficient funds check, the availability of consumer credit counseling services and debt repayment alternatives, the

procedure for filing consumer complaints with the Commissioner, and other matters that may be helpful or beneficial to customers. The informational materials shall be made available by the licensee in a conspicuous place at each location that offers deferred deposit check cashing and shall be presented to each customer before the deferred deposit transaction is executed. The licensees shall, at their own expense, produce, print, and distribute the materials.

(n) Effective July 31, 2003, this section shall apply only for purposes set forth in G.S. 53-277(a)(1). Also effective July 31, 2003, except as permitted under G.S. 53-277, the practice of making deferred deposit transactions shall be unlawful.'

SECTION 7. G.S. 53-282 reads as rewritten:

'**§ 53-282. Record keeping; receipt requirements.**

(a) Every person required to be licensed under this Article shall maintain in its offices the following records:

(1) Delayed deposit payment devices currently held for deposit.

(2) A daily transaction journal, or an equivalent record, of both traditional check-cashing and deferred deposit transactions.

(3) The written receipt required by G.S. 53-282(b).

(4) The customer agreement required by G.S. 53-281.

(5) For each customer, a history card, or its equivalent, that reflects the time, date, and amount of each deferred deposit transaction for that customer during the most recent three-year period. The history card shall also state whether each deferred deposit payment device was deposited or redeemed for cash.

(6) Bank statements of the licensee. If the statements are not maintained on the premises of the licensee, the statements shall be made available immediately upon request of the Commissioner.

~~Every person required to be licensed under this Article~~ In addition to the records required in this subsection, each licensee shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a ~~check~~ payment device shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the ~~check,~~ payment device, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

(d) The Commissioner may require licensees to submit any data or information, including information concerning deferred deposit transactions, which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of his oversight duties.'

SECTION 8. G.S. 53-283 reads as rewritten:

'**§ 53-283. Prohibited practices.**

(a) No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this ~~Article.~~Article or originate, process, arrange, or accept or transmit applications for deferred deposit transactions for which the fees exceed those permitted in this Article.

(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.

(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.

(5) Engage in unfair, deceptive, or fraudulent practices.

(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained

appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(7) Use or threaten to use the criminal process to collect on a payment device in a deferred deposit transaction.

(8) Make more than one deferred deposit transaction to a customer at the same time or accept or hold more than one deferred deposit payment device from a customer at the same time.

(9) In conjunction with another person or entity, originate, arrange, process, or accept or transmit an application for a deferred deposit transaction that, except for federal preemption of State law, would be unlawful under this Article.

(10) Use any device or subterfuge to evade the requirements imposed on deferred deposit transactions by this Article.

(11) Obtain, or seek to obtain from a customer, a waiver of any of the rights or protections imposed by this Article.

(12) Fail to promptly, and in any event within 24 hours, report deferred deposit transactions to the database established by the Commissioner pursuant to G.S. 53-291 when such database is operational.

(b) A violation of any of the provisions of this section or G.S. 53-281 shall constitute an unfair trade practice under G.S. 75-1.1.'

SECTION 9. G.S. 53-284(a) reads as rewritten:

'**§ 53-284. Suspension and revocation of license; grounds; procedure.**

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(7) Failed to comply with the Commissioner's request for assistance in resolving a complaint.

(8) Failed to cooperate with any investigation conducted by the Commissioner.'

SECTION 10. G.S. 53-286 reads as rewritten:

'**§ 53-286. Civil penalties and restitution.**

(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

(b) The making or collecting of any deferred deposit transaction agreement which violates any provision of this Article or rule adopted thereunder, except as a result of accidental or bona fide error of computation, shall be void. The licensee or any other party acting by or through a licensee shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the transaction.'

SECTION 11. Article 22 of Chapter 53 of the General Statutes is amended by adding the following sections to read:

'**§ 53-290. Arbitration agreements.**

(a) A deferred deposit transaction may not include terms that require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(b) Subject to subsection (c) of this section, subsection (a) of this section shall not be construed as limiting the rights of the customer and the lender to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

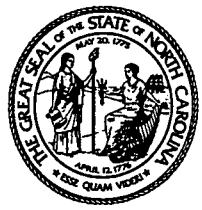
(c) No provision of any deferred deposit transaction shall be applied or interpreted so as to bar a customer from bringing an action in an appropriate court of competent jurisdiction, pursuant to this Article or any other provision of law, for damages or other relief in connection with any alleged violation of this Article or any other law.

(d) Subsections (a) and (c) of this section shall not apply to the extent such State law limitations are preempted by federal law or regulation.

'**§ 53-291. Database for reporting of deferred deposit transactions.**

On or before May 1, 2002, the Commissioner shall implement a common database with real-time access through an Internet connection for check-cashing services that offer deferred deposit transactions, as provided in this section. The Commissioner may contract with a private vendor at the Commissioner's discretion. The database must be accessible to the Commissioner and licensees to verify whether any deferred deposit transactions are outstanding for a particular customer in connection with a deferred deposit transaction involving that customer and may not be used for any other purpose. Licensees shall submit such data before entering into each deferred deposit transaction and upon the repayment of each deferred deposit transaction in such format and with such identifying information as the Commissioner shall require, including the drawer's name, address, drivers license number, amount of the transaction, date of transaction, the date that the transaction is paid off, and such additional information as may be required by the Commissioner. All information provided under this section shall be maintained by the Commissioner as confidential to be used only for the purposes specified in this Article, shall not be subject to public inspection, and shall not be a public record under Chapter 132 of the General Statutes. The Commissioner may impose a fee not to exceed one dollar ($1.00) per transaction to access the database. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by licensees in accordance with this section.

'**§ 53-292. Choice of laws.**



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 104

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

S104-ARO-59 [v.1]

A choice of law provision in a deferred deposit transaction contract which provides that the contract is to be interpreted pursuant to the laws of another state is against the public policy of this State and therefore void and unenforceable if the party against whom enforcement of the choice of law provisions is sought is a resident of this State at the time the contract is entered into. This provision may not be varied by agreement of the parties.

'**§ 53-293. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Article shall not be affected thereby.'

SECTION 12. The Commissioner of Banks shall conduct appropriate examinations or surveys and report to the 2003 General Assembly on the practice of deferred deposit transactions. The Commissioner of Banks, in consultation with the Attorney General, shall report the Commissioner's findings and recommendations, including legislation, to the 2003 General Assembly on or before April 1, 2003.

SECTION 14. This act becomes effective October 1, 2002, and applies to transactions made on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 104

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S104-CSRO-49 [v.2]

8/26/2002 8:30:40 PM

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

February 8, 2001

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

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

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the

third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in regulation Z of the federal Truth in Lending Act, (12 C.F.R. 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments. "

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 32-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount.

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4."

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(4b).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than fourteen (14) days nor more than sixty (60) days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 PM ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth in Lending Act (12 USC §1601,et seq.) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's Office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the Commissioner, which approval shall not be unreasonably withheld.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article."

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three

transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender verifies the accuracy of this certification through reasonable means, including a manual investigation or an electronic query of all of the lender's own records, and also available databases approved by the Commissioner.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check."

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four pay days, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen dollar ($15.00) processing charge for each repayment plan."

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **'THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.'**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act becomes effective October 1, 2002, and applies to transactions made on or after that date.

SENATE BILL 104:
Regulate Deferred Deposit.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	
Date:	August 20, 2002	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (S104-CSRO-49 [v.1])		Staff Attorney

*SUMMARY: **The Proposed Committee Substitute for SB 104 would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This committee substitute would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to $300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements. The definition also provides that although national depository institutions are exempt from interest rate, finance charge and licensure provisions of the Act, they are subject to all other provisions when they act as a deferred deposit lender.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed $300.00;
- Lender may not charge a fee in excess of 15% of the loan amount;
- Loan may not be repaid by the proceeds of another deferred deposit loan;

- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
- The maturity date may not be less than ten days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.00;
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a $15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties which may be imposed for violation of the Act from $1,000.00 to $10,000.00 per violation.

The act would become effective October 1, 2002 and apply to transactions made on or after that date.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 16, 2002

TO: House Finance Committee

FROM: Adam Levinson and Chloe Gossage
Fiscal Research Division

RE: Proposed Committee Substitute for SB 104

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ( )		
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenue					
County School Funds	$9,500	$9,500	$9,500	$9,500	$9,500
Expenditures					
Commissioner of Banks	0	0	0	0	0
GENERAL FUND					
Correction	*Repeated violations may incur criminal penalties.				
Judicial	*Repeated violations may incur criminal charges.				
ADDITIONAL PRISON BEDS**	*Repeated violations may incur criminal penalties.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Office of State Commissioner of Banks, Department of Correction; Judicial Branch

EFFECTIVE DATE: October 1, 2002

***This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

The proposed committee substitute for SB 104 (hereinafter PCS) reinstates the authorization for payday lending that had been authorized originally by the North Carolina (NC) General Assembly in 1997 and extended in 2001.[1] In reauthorizing payday lending, the PCS also redefines the cashing of postdated and delayed deposit checks as "deferred deposit transactions," a term that was not present in the 1997 legislation, and identifies as "lenders" persons or businesses acting as agents for third parties who may be exempt from licensing under the act. The PCS also adds to statute a number of procedural requirements and limitations with which deferred deposit lenders must comply in order to avoid possible criminal and civil penalties. Finally, by specifying that civil penalties imposed for violations may be imposed "upon persons acting on behalf of a licensee," the PCS extends the statutory requirements to a larger group of businesses than had been identified in the former legislation.

ASSUMPTIONS AND METHODOLOGY:

County School Funds

Statute directs that all civil money penalties imposed by the Commissioner under the act shall be paid to the county school fund. According to the Commissioner, since 1997 approximately $38,000 in civil penalties for violations of payday lending laws have been collected. The Commissioner does not anticipate that the reauthorization would lead to more violations of the law than occurred from 1997-2001. Assuming equal distribution of those penalties across that period of time, and a frequency and severity of future penalties that is consistent with historical trends, this data suggests that approximately $9,500 will be collected in each of the next five fiscal years. No estimate is available for the distribution of this revenue across counties.

Commissioner of Banks

The Office of the Commissioner of Banks (Commissioner) is authorized in statute to regulate the check cashing and deferred deposit industry in NC and to charge fees to recover the costs of licensure and investigations.[2] According to the Commissioner, this regulatory function was supported completely by fees from 1997 to 2001. Beginning October 1, 2002, when the new legislation takes effect, the Commission will once again operate on a completely fee-supported basis. While the reauthorization of payday lending, and accompanying regulatory function, will certainly increase the activity of the Commissioner, the PCS will therefore have no net fiscal impact on the Commissioner.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated

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[1] S.L. 1997-391, "An Act to Regulate the Check-Cashing Business;" S.L. 2001-323, "An Act to Delay the Sunset of the Provisions of the Check Casher Act Authorizing Postdated or Delayed Deposit Checks."

[2] G.S. 53-278

available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.*

The proposed legislation would create a new category of license for lenders offering deferred deposit transactions. These lenders would be subject to G.S. 53-276 and 53-287, making violation of the new statute a Class I felony. Since this is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Office of the N.C. Commissioner of Banks anticipates that most violations will not result in criminal charges or convictions.

Using available data on average sentences for Class I felons, the Sentencing Commission estimates that if this bill resulted in 5 additional convictions for Class I felonies each year, there would be the need for 1 additional prison bed in the first year and 2 additional beds in the second year due to active sentences and post-release sentencing revocations. While only 9 percent of Class I felons served active sentences (and thus impact prison beds) in FY 2000-01, another 37 percent served intermediate sentences and 54 percent served community sentences. In FY 2000-01, the average operating cost for a prison bed was $65.29 per day, and the average length of sentence for a Class I felon was seven months. Also in FY 2000-01, the average cost of an intermediate punishment was $12.69 per offender per day, and the average cost of a community punishment was $1.87 per offender per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The PCS provides various regulations for deferred deposit transactions and creates a new Class I felony offense for engaging in the business of making deferred deposit transactions without first obtaining a license. While under current G.S. 53-287, any violation of G.S. 53-276 by a person required to obtain a license under Article 22 is a Class I felony, deferred deposit transactions are not currently permitted by law. As a result, there could be some additional workload for the courts due to violations arising under the bill.

The AOC does not have an offense code for the Class I felony under current G.S. 53-287, which is an indication that charges or convictions occur infrequently. The N.C. Commissioner of Banks website indicates that 233 licensed check-cashing businesses owned 1,131 check-cashing locations or branches across the State during 2000. Of those 233 check-cashing businesses, 165 check-cashing businesses owned locations that conducted either deferred deposit transactions only or both check cashing and deferred deposit transactions. The Office of the N.C. Commissioner of Banks also indicates that there were 260 licensed check-cashing businesses across the state as of August 31, 2001, 50 businesses reported for engaging in unlawful deferred deposit transactions as of May 21, 2002, and 13,805 deferred deposit transactions violations between August 1998 and August 2001.

While the data provided by the Office of the N.C. Commissioner of Banks suggest that there are numerous locations or branches owned by various check-cashing businesses across the State that could result in frequent violations under the bill, the Office does not expect many violations to arise. The Office expects that most check-cashing businesses engaging in deferred deposit transactions will comply with the law initially, or, if caught engaging in these transactions unlawfully, will then comply with the law (i.e., apply for the required license) and pay applicable civil penalties imposed by the Commissioner. The Office indicated that, although available by law, criminal penalties do not typically result from these violations. To the extent that check-cashing businesses conducting deferred deposit transactions comply with the law and civil penalties are imposed by the Commissioner rather than criminal penalties pursued, the AOC would not anticipate many new cases under the bill.

SOURCES OF DATA: Office of the NC Commissioner of Banks; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: The effective date for this legislation is October 1, 2002. Typically, criminal penalties are effective December 1, 2002, to give the court system time to adjust to the new statutes.

THE NEWS&OBSERVER
MONDAY, AUGUST 26, 2002

Who's paying for payday lending?

BY ELLEN SCHLOEMER

RALEIGH – To listen to the payday lending industry, North Carolina is overrun by unfeeling, paternalistic churches and community groups trying to prevent people in financial crisis from getting help from caring, altruistic payday lenders. And the industry's lobbyists say it's only a happy coincidence that selfless payday lenders in North Carolina raked in more than $100 million in fees in a recent year, when they really were just trying to help people.

Calling churches, social service groups and community advocates "paternalistic" to oppose payday loans as they exist today implies that we don't understand the needs of the poor or vulnerable, the people whom we serve every day. We do know them, and we know that in most cases getting a payday loan makes their lives worse, not better.

POINT OF VIEW

Here's what else we know:

• Payday loans are unfair. Consumers may need short-term credit to cover emergencies, but they shouldn't be charged fees equaling 500 percent interest to get it. Payday lenders say they must charge high fees because of the risk they take making loans. But companies that offer credit cards to people with bad credit charge around 25 percent interest — are payday loans really 20 times riskier?

• Payday loans trap people in a cycle of debt. They typically must be repaid in full in two weeks, which is far too soon for most borrowers. So lenders encourage them to take out new loans — the borrower gets no "new money" but does pay another fee to pay off the previous loan. Fees pile up, and the debt cycle gets worse.

In North Carolina, the average payday borrower took out 14 loans in 2000. Many consumers end up in worse financial shape than when they started. One of our church members, for example, will end up paying $1,780 to pay off $700 in payday loans.

• Social services groups are harmed by payday lending. Trapped in debt, many payday customers are turning to community groups and churches for food, money and other aid to deal with their desperate financial straits. (A Kansas City church recently found that 80 percent of visitors to its food pantry were in debt to payday lenders.) It is unconscionable that underfunded, understaffed nonprofits should be expected to handle a growing flood of needy people, so that payday lenders can pocket millions of dollars in fees.

• We need economic fairness, not the rule of the jungle. Payday lenders are taking advantage of a situation that is not just of their own making. As a society, we need to ensure that people earn a living wage, so they aren't thrown into financial crisis whenever an unexpected emergency hits. And banks need to step up here too, by extending overdraft protection to customers with less-than-perfect credit. (By the way, consumers who pay off payday loans on time don't improve their credit rating, because lenders don't report this to the credit bureaus. Talk about rigging the game in your favor!)

Payday lenders are operating in bad faith. Since the state law permitting payday lending expired in 2001, many payday lenders have dubbed themselves "facilitators" for out-of-state banks, and continue to do business here. And now they have gotten some state legislators to introduce last-minute "reform" legislation stacked with even more industry-friendly loopholes. Legislation must not be fast-tracked through the General Assembly without public discussion and thoughtful consideration of alternatives that would provide consumers with fair, affordable credit and lenders with a reasonable profit.

Ellen Schloemer is the director of social ministries at St. Raphael Catholic Church and a member of the Just Money network of faith communities.

House Committee on Finance

Minutes
August 27, 2002

Continuing from its earlier meeting on this day, the House Committee on Finance met on Tuesday, August 27, 2002, at 3:45 P.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chair Hill; and Representatives Alexander, Blust, Capps, Cox, Dedmon, Eddins, Edwards, Gray, Hackney, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Weiss, Willingham, Womble, Baddour, and Cunningham and Earle. Also present were Sergeant-at-Arms staff Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included Trina Griffin, Martha Walston, Richard Bostic, and Karen Cochran-Brown; Committee Assistants Nancy Brantley, Blinda Edwards, and Joyce Harris; and Grayson Cave, Page, from Wake County.

Chairman Allen opened the meeting to resume discussions on the Proposed Committee Substitute for SB 104, explained by Representative Culpepper, and the Amendment on the Bill, proposed by Representative Baddour.

Both Representative Culpepper and Representative Baddour went over points they wanted to make with regard to the PCS and the Amendment, and they explained the differences in their proposals.

After a lengthy discussion of the PSC and the Amendment, Representative Allen recognized the following persons who spoke on the Bill and the Amendment:

- Jerry Bird from Fayetteville, who has been in the check-cashing business since 1988 and is currently President of the North Carolina Check-Cashing Association, stated--as did all of the following speakers--that he had not been consulted when the Bill was being drafted, and he supported the Bill.
- Willie Green from Shelby supported the Bill.
- Vicky Woodward, representing Community Financial Services of America, spoke in support of the Bill.
- Mayor Fred Yates, 3rd Vice President of the NAACP, also spoke in support of the Bill.

Amendment No. 1. Representative Capps offered an Amendment that would make two technical changes to the bill. The Amendment was adopted.

Continuing the discussion, Chairman Allen recognized Mr. Byrd, who had spoken earlier. He reiterated that his company could not operate under the Baddour Amendment,

but the Bill as presented would allow the industry--which had lost about 100 operators since the sunset of the last bill--to operate and make a reasonable profit and stay in business.

Amendment No. 2. Representative Baddour moved for the adoption of his Amendment. By a vote of 10 ayes and 16 nays, the motion failed.

Representative Hackney made a motion to adjourn the meeting, which failed.

Rep. Buchanan moved to give the PCS a favorable report, which changes the title, unfavorable as to the Senate Committee Substitute Bill. The motion carried. Copies of the PCS, Amendments, Bill, Bill Summary and Fiscal Note are attached as part of these minutes.

There being no further business, the meeting was adjourned at 5:40 P.M.

Respectfully submitted,

Representative Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

PCS for Senate Bill 104
Visitor Registration Sheet

AGENDA

House Finance Committee

August 27, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 104 **PCS: REGULATE DEFERRED DEPOSIT - Rep. Culpepper**

ADJOURNMENT

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike [illegible]	NC State AFLCIO
James Andrews	NC State AFL-CIO
Rob Schofield	NC Justice Center
Elizabeth Ouzts	NCPIRG
[illegible]	NCCA
Carol Lawler	EGHS
Vicki Woodward	CFSA
Chad Essick	Edmisten & Webb
Elizabeth Dalton	Bon & Associates
Phil McGaugh	Cashpoint - Rubin
Ryan Heffernan	N/A
Megan Mendenhall	Poyner & Spruill
DAVID BARNES	Poyner & Spruill
Jimmy Boyd	NCCCA
Jeanne Doral	"
Becky Mercer	Mercer & Assoc.
Erin Culbreth	LBA
Michelle Ewing	LBA

VISITOR REGISTRATION SHEET

Finance — Aug. 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rev. Dr. James B Vicen	North Carolina Synod of the ELCA Office of Advocacy Ministry
Ellen Schloemer	St. Raphael Catholic Church
Malcolm White	CRL
Reginald Johnson	SELF-HELP
Richard C Hatch	AARP
Helen Savage	AARP
Paul Stock	NC Bankers Assn.
Helen Moore	Self-Help
[illegible]	Coalition for Responsible Lending
Fred Yates	NC NAACP
Jim Wiggins	NC NAACP

8/28

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 104 A BILL TO BE ENTITLED AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR FOUR-YEAR TERMS FOR MEMBERS OF THE GENERAL ASSEMBLY AND TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 104

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S104-PCS8782-RO-49

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

February 8, 2001

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

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

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the

third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in regulation Z of the federal Truth in Lending Act, (12 C.F.R. 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments."

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 32-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount.

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4.

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address, and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(5a).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than 14 days nor more than 60 days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 P.M. ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth in Lending Act (12 U.S.C. § 1601, et seq.) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article.

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender verifies the accuracy of this certification through reasonable means, including a manual investigation or an electronic query of all of the lender's own records, and also available databases approved by the Commissioner.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check.

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four paydays, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen-dollar ($15.00) processing charge for each repayment plan.

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act becomes effective October 1, 2002, and applies to transactions made on or after that date.

3/5ths majority

BLIC BILL

Judiciary I

Committee Substitute For

S.B. 104

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NORTH CAROLINA CONSTITUTION TO PROVIDE FOR FOUR-YEAR TERMS FOR MEMBERS OF THE GENERAL ASSEMBLY AND TO LIMIT THE LENGTH OF LEGISLATIVE SESSIONS.

Introduced by Senator(s) Hoyle

Principal Clerk's Use Only

Committee Substitute Adopted Pursuant to Rule 45.1
APR 23 2001

CHANGES TITLE

OR AMENDMENT NO. 1 Foxx APR 24 2001
Withdrawn 4-45

Recommendation
Senate motion to

PASSED 2nd & 3rd READINGS 3/5ths
42-7 42-7
APR 24 2001
ORDERED SENT TO HOUSE OF REPRESENTATIVE

Janet Pruitt

04-25-01P11:04 RCVD

PASSED 1st READING
APR 26 2001
AND REFERRED TO COMMITTEE ON Public Safety

ON MOTION OF REP. Culpepper
WITHDRAWN FROM Rules, etc.
AUG 12 2002
RECOMMITTED TO Finance

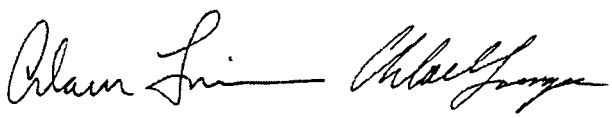
arise. The Office expects that most check-cashing businesses engaging in deferred deposit transactions will comply with the law initially, or, if caught engaging in these transactions unlawfully, will then comply with the law (i.e., apply for the required license) and pay applicable civil penalties imposed by the Commissioner. The Office indicated that, although available by law, criminal penalties do not typically result from these violations. To the extent that check-cashing businesses conducting deferred deposit transactions comply with the law and civil penalties are imposed by the Commissioner rather than criminal penalties pursued, the AOC would not anticipate many new cases under the bill.

SOURCES OF DATA: Office of the NC Commissioner of Banks; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

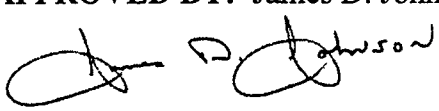
TECHNICAL CONSIDERATIONS: The effective date for this legislation is October 1, 2002. Typically, criminal penalties are effective December 1, 2002, to give the court system time to adjust to the new statutes.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Adam Levinson, Chloe Gossage



APPROVED BY: James D. Johnson



DATE: August 28, 2002

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE
(INCARCERATION NOTE G.S. 120-36.7)

BILL NUMBER: Senate Bill 104, House Committee Substitute (2nd Edition)

SHORT TITLE: Regulate Deferred Deposit

SPONSOR(S): Representative Culpepper

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
Revenue					
County School Funds	$9,500	$9,500	$9,500	$9,500	$9,500
Expenditures					
Commissioner of Banks	0	0	0	0	0
GENERAL FUND					
Correction	*Repeated violations may incur criminal penalties.				
Judicial	*Repeated violations may incur criminal charges.				
ADDITIONAL PRISON BEDS**	*Repeated violations may incur criminal penalties.				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Office of State Commissioner of Banks, Department of Correction; Judicial Branch, County School Funds

EFFECTIVE DATE: October 1, 2002

***This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effectiv annual percentage rate (APR).
- The maturity date may not be less than ten days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.00;
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a $15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the require endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties which may be imposed for violation of the Act from $1,000.00 to $10,000.00 per violation.

The act would become effective October 1, 2002 and apply to transactions made on or after that date.

SENATE BILL 104:
Regulate Deferred Deposit.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	
Date:	August 20, 2002	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (S104-CSRO-49 [v.1])		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for SB 104 would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This committee substitute would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to $300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements. The definition also provides that although national depository institutions are exempt from interest rate, finance charge and licensure provisions of the Act, they are subject to all other provisions when they act as a deferred deposit lender.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed $300.00;
- Lender may not charge a fee in excess of 15% of the loan amount;
- Loan may not be repaid by the proceeds of another deferred deposit loan;

BILL SUMMARY:

The proposed committee substitute for SB 104 (hereinafter PCS) reinstates the authorization for payday lending that had been authorized originally by the North Carolina (NC) General Assembly in 1997 and extended in 2001.[1] In reauthorizing payday lending, the PCS also redefines the cashing of postdated and delayed deposit checks as "deferred deposit transactions," a term that was not present in the 1997 legislation, and identifies as "lenders" persons or businesses acting as agents for third parties who may be exempt from licensing under the act. The PCS also adds to statute a number of procedural requirements and limitations with which deferred deposit lenders must comply in order to avoid possible criminal and civil penalties. Finally, by specifying that civil penalties imposed for violations may be imposed "upon persons acting on behalf of a licensee," the PCS extends the statutory requirements to a larger group of businesses than had been identified in the former legislation.

ASSUMPTIONS AND METHODOLOGY:

County School Funds

Statute directs that all civil money penalties imposed by the Commissioner of Banks (Commissioner) under the act shall be paid to the county school fund. According to the Commissioner, since 1997 approximately $38,000 in civil penalties for violations of payday lending laws had been collected. The Commissioner does not anticipate that the reauthorization would lead to more violations of the law than occurred from 1997-2001. Furthermore, the Commissioner does not anticipate that increasing the maximum imposable civil penalty from $1,000 to $10,000 will significantly affect the total amount of penalty monies imposed. Assuming equal distribution of the penalties imposed from 1997-2001, and a frequency and severity of future penalties that is consistent with historical trends, this data suggests that approximately $9,500 will be collected in each of the next five fiscal years.

Commissioner of Banks

The Commissioner is authorized in statute to regulate the check cashing and deferred deposit industry in NC and to charge fees to recover the costs of licensure and investigations.[2] According to the Commissioner, this regulatory function was supported completely by fees from 1997 to 2001. Beginning October 1, 2002, when the new legislation takes effect, the Commissioner will once again operate on a completely fee-supported basis. While the reauthorization of payday lending, and accompanying regulatory function, will certainly increase the activity of the Commissioner, the PCS will therefore have no net fiscal impact on the Commissioner.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.*

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[1] S.L. 1997-391, "An Act to Regulate the Check-Cashing Business;" S.L. 2001-323, "An Act to Delay the Sunset of the Provisions of the Check Casher Act Authorizing Postdated or Delayed Deposit Checks."

[2] G.S. 53-278

The proposed legislation would create a new category of license for lenders offering deferred deposit transactions. These lenders would be subject to G.S. 53-276 and 53-287, making violation of the new statute a Class I felony. Since this is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Office of the N.C. Commissioner of Banks anticipates that most violations will not result in criminal charges or convictions.

Using available data on average sentences for Class I felons, the Sentencing Commission estimates that if this bill resulted in 5 additional convictions for Class I felonies each year, there would be the need for 1 additional prison bed in the first year and 2 additional beds in the second year due to active sentences and post-release sentencing revocations. While only 9 percent of Class I felons served active sentences (and thus impact prison beds) in FY 2000-01, another 37 percent served intermediate sentences and 54 percent served community sentences. In FY 2000-01, the average operating cost for a prison bed was $65.29 per day, and the average length of sentence for a Class I felon was seven months. Also in FY 2000-01, the average cost of an intermediate punishment was $12.69 per offender per day, and the average cost of a community punishment was $1.87 per offender per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The PCS provides various regulations for deferred deposit transactions and creates a new Class I felony offense for engaging in the business of making deferred deposit transactions without first obtaining a license. While under current G.S. 53-287, any violation of G.S. 53-276 by a person required to obtain a license under Article 22 is a Class I felony, deferred deposit transactions are not currently permitted by law. As a result, there could be some additional workload for the courts due to violations arising under the bill.

The AOC does not have an offense code for the Class I felony under current G.S. 53-287, which is an indication that charges or convictions occur infrequently. The N.C. Commissioner of Banks website indicates that 233 licensed check-cashing businesses owned 1,131 check-cashing locations or branches across the State during 2000. Of those 233 check-cashing businesses, 165 check-cashing businesses owned locations that conducted either deferred deposit transactions only or both check cashing and deferred deposit transactions. The Office of the N.C. Commissioner of Banks also indicates that there were 260 licensed check-cashing businesses across the state as of August 31, 2001, 50 businesses reported for engaging in unlawful deferred deposit transactions as of May 21, 2002, and 13,805 deferred deposit transactions violations between August 1998 and August 2001.

While the data provided by the Office of the N.C. Commissioner of Banks suggest that there are numerous locations or branches owned by various check-cashing businesses across the State that could result in frequent violations under the bill, the Office does not expect many violations to

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS (S104-CSRO-49(v.2))

H. B. No. _____ DATE Aug. 27, 2002

S. B. No. 104 Amendment No. 1

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 3, line 8

( ) WHICH CHANGES THE TITLE

by deleting the phrase "G.S. 53-275(46)."
and substituting the phrase "G.S. 53-275(5a)".;

and on page 3, line 34-36
by rewriting the lines to read:

"(3) A mandatory arbitration clause."

SIGNED Rep Russell Capps

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 104

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

S104-ARO-59 [v.1]

Date Aug. 27, 2002 .2002

Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Representative Baddour

moves to amend the bill on page 1, line 5 through page 5, line 32, by deleting the lines and substituting the following:

"**SECTION 1.** G.S. 53-275 reads as rewritten:

'**§ 53-275. Definitions.**

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

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(1a) "Cash advance" means the amount of cash or its equivalent, whether paid by direct payment or by electronic credit or deposit, provided to a customer in a deferred deposit transaction.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. "Check-cashing service" shall also mean any person or entity engaged in the business of making, originating, processing, arranging, or accepting or transmitting applications for deferred deposit transactions, whether the transactions are done directly for the person's or entity's own account or in conjunction with, or as agent for, another person or entity.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a customer in return for a payment device and agrees, for consideration, to hold the payment device for a period of days prior to deposit, presentment, or withdrawal.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Payment device" means an electronic or written check, draft, money order, authorization for an electronic debit or withdrawal, or other electronic or written instrument or order for the transmission or payment of money or monetary value, whether or not the instrument is negotiable.

(6) "Person" means an individual, partnership, association, or corporation.'

SECTION 2. G.S. 53-276 reads as rewritten:

'**§ 53-276. License required.**

No person or other entity may ~~engage in the business of cashing checks, drafts, or money orders for consideration~~ operate a check-cashing service without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a ~~check~~ check, electronic credit or deposit, or other currency equivalent instead of currency when cashing payment ~~instruments.~~ devices.'

SECTION 3. G.S. 53-277 reads as rewritten:

'**§ 53-277. Exemptions.**

(a) This Article shall not apply to:

(1) A bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any ~~state; and~~ state, except that the following shall apply to deferred deposit transactions under G.S. 53-281.1 entered into directly between such an entity and a North Carolina resident to the extent these provisions apply to licensees:

a. G.S. 53-281.1(a), (b), (e), (f), (g), (h), (i), (j), (k), and (l).

b. G.S. 53-283(a)(3), (5), (7), (8), (9), (10), (11), and (12).
c. G.S. 53-283(b).

(2) Any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a check-cashing service, from time to time cashes checks, drafts, or money orders for a fee or other consideration, where not more than two dollars ($2.00) is charged for the service.

(b) A person licensed under Article 16 of this Chapter (Money Transmitters Act) is exempt from G.S. 53-276, 53-278, 53-279, and 53-284, but is deemed a licensee for purposes of the remaining provisions of this Article. This exemption does not apply to an agent of a person licensed under Article 16 of this Chapter.'

SECTION 4. G.S. 53-278 reads as rewritten:

'**§ 53-278. Application for license; investigation; application fee.**

(a) An application for licensure under this Article shall be in writing, under oath, and on a form prescribed by the Commissioner. The application shall set forth all of the following:

(1) The name and address of the applicant.
(2) If the applicant is a firm or partnership, the name and address of each member of the firm or partnership.
(3) If the applicant is a corporation, the name and address of each officer, director, registered agent, and principal.
(4) The addresses of the locations of the business to be licensed.
(5) Other information concerning the financial responsibility, background experience, and activities of the applicant and its members, officers, directors, and principals as the Commissioner requires.

(b) The Commissioner may make such investigations as the Commissioner deems necessary to determine if the applicant has complied with all applicable provisions of this Article and State and federal law.

(c) The application shall be accompanied by payment of a two hundred fifty dollar ($250.00) application fee and a five hundred dollar ($500.00) investigation fee. If the applicant intends to offer deferred deposit transactions under G.S. 53-281.1, the

application fee shall be five hundred dollars ($500.00) and the investigation fee shall be one thousand dollars ($1,000). These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part thereof.

(d) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars ($250.00) plus a fifty dollar ($50.00) fee for each branch location certificate issued under a license. For any licensee who offers deferred deposit transactions under G.S. 53-281.1, the renewal fee shall be five hundred dollars ($500.00) plus a two hundred fifty dollar ($250.00) fee for every branch location certificate.

(e) The Commissioner shall be authorized to assess licensees for any costs incurred by the Commissioner as a result of implementation of this Article.

(f) The Commissioner is authorized to allocate up to one-half the sums collected from application and licensing fees under this Article for consumer education and research, to be conducted by the Commissioner or another State agency, related to deferred deposit transaction services under G.S. 53-281.1.'

SECTION 5. G.S. 53-280 reads as rewritten:

'**§ 53-280. Maximum fees for service; fees posted; endorsement of checks cashed.**

(a) Notwithstanding any other provision of law, no check-cashing business licensed under this Article shall directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) Three percent (3%) of the face amount of the check or five dollars ($5.00), whichever is greater, for checks issued by the federal government, State government, or any agency of the State or federal government, or any county or municipality of this State.

(2) Ten percent (10%) of the face amount of the check or draft or five dollars ($5.00), whichever is greater, for personal ~~checks.~~checks or drafts.

(3) Five percent (5%) of the face amount of the check or five dollars ($5.00), whichever is greater, for all other checks, or for money orders.

(b) A licensee may not advance monies on the security of any check or draft unless the account from which the check or draft being presented is drawn is legitimate,

open, and active. Except as provided by ~~G.S. 53-281(a),~~ G.S. 53-281.1(a), any licensee who cashes a check or draft for a fee shall deposit the check or draft not later than three business days from the date the check or draft is cashed.

(c) A licensee shall ensure that in every location conducting business under a license issued under this Article, there is conspicuously posted and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee shall further ensure that notice of the fees currently charged at every location shall be filed with the Commissioner.

(d) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.'

SECTION 6. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new section to read:

'**§ 53-281.1. Deferred deposit transactions.**

(a) A deferred deposit transaction shall have a minimum term of 60 days from the date of the transaction.

(b) The face amount of any deferred deposit payment device cashed pursuant to this section shall not exceed three hundred dollars ($300.00).

(c) Each deferred deposit transaction shall be documented by a written agreement that has been signed by the customer and the licensee. The licensee shall provide the customer with a copy of the agreement at the time it is executed. The written agreement shall contain a statement of the cash advance and the total amount of any fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR) consistent with the requirements of the federal Truth in Lending Act. The written agreement shall contain the following specific disclosures:

(1) The address and telephone number of the Office of the Commissioner of Banks with a statement that the licensee is licensed by the Commissioner of Banks and that the customer may file a complaint with the Commissioner if the customer believes the licensee has acted improperly or unlawfully either in the transaction or in the collection process.

(2) That the customer may not be prosecuted for a worthless check violation if the check is returned for insufficient funds but the

customer may be liable to the licensee for no more than one fifteen dollar ($15.00) worthless check fee.

(3) That the customer has the right to contact a consumer credit counseling service for counseling or a debt management repayment program if the customer is unable to pay on the deferred deposit transaction when it becomes due.

(4) That the customer has the right to rescind the delayed deposit transaction at no cost to the customer on or before the close of the following business day.

(d) A licensee shall not directly or indirectly charge any fee or other consideration for cashing a postdated or deferred deposit payment device in excess of fifteen per cent (15%) of the cash advance. A licensee shall not charge a customer any fees or other consideration related to a deferred deposit transaction unless specifically authorized by this Article.

(e) No payment device cashed under the provisions of this section shall be repaid by the proceeds of another payment device cashed by the same licensee or any affiliate of the licensee. A licensee shall not, for any additional consideration, renew or otherwise extend any postdated or deferred payment device. A licensee may agree with its customer at any time to defer deposit or collection of a payment device without additional consideration.

(f) The customer shall have the right to rescind the delayed deposit transaction at no cost to the customer by giving written notice and returning the cash advanced on or before the close of the business day following the date of the deferred deposit transaction.

(g) After May 30, 2003, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who has had four deferred deposit transactions with any licensee or licensees within the previous 12 months. The licensee shall utilize the deferred deposit transaction database described in G.S. 53-291 to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(h) After May 30, 2003, or upon the establishment by the Commissioner of the database described in G.S. 53-291, whichever occurs first, no licensee shall enter into a deferred deposit transaction with any customer who would have in the aggregate, including the new transaction, more than three hundred dollars ($300.00) in deferred deposit transactions outstanding with any licensee or licensees. The licensee shall utilize the deferred deposit transaction database to establish compliance with this subsection. No licensee shall use or rely on a customer's certification or warranty as a means of compliance with this subsection.

(i) A licensee may collect a fee for a returned check pursuant to G.S. 25-3-506, but the fee shall not exceed fifteen dollars ($15.00) if the check is returned for insufficient funds. Only one fee may be collected or imposed per payment device.

(j) Any deferred deposit transaction made under the terms of this section shall be payable in a lump sum at the end of the term, except that the customer, in the customer's sole discretion, may prepay the obligation in whole or in part without additional charge or fee prior to the end of the term.

(k) No licensee may make, originate, or arrange a deferred deposit transaction unless the licensee maintains a place of business in this State.

(l) Notwithstanding any other provision of State law, no deferred deposit transaction agreement shall include any provision that waives any federal or State constitutional right of customers or limits the remedies of customers available in law or equity, whether acting individually or on behalf of others similarly situated, or their rights to civil discovery or appeal. In addition, no deferred deposit transaction agreement shall require a party to assert any claim against the party who prepared the agreement in a forum that is less convenient, more costly, or more dilatory for the resolution of the dispute than a judicial forum established in this State.

(m) The Commissioner shall prescribe the format and contents of a consumer information sheet or pamphlet to educate consumers about deferred deposit transactions. The informational materials shall include information on the responsible use of deferred deposit transactions, the costs of deferred deposit transactions, the limitations on the number of transactions, and the dollar amount of outstanding checks, the fact that the customer cannot be prosecuted for a deferred deposit insufficient funds check, the availability of consumer credit counseling services and debt repayment alternatives, the

procedure for filing consumer complaints with the Commissioner, and other matters that may be helpful or beneficial to customers. The informational materials shall be made available by the licensee in a conspicuous place at each location that offers deferred deposit check cashing and shall be presented to each customer before the deferred deposit transaction is executed. The licensees shall, at their own expense, produce, print, and distribute the materials.

(n) Effective July 31, 2003, this section shall apply only for purposes set forth in G.S. 53-277(a)(1). Also effective July 31, 2003, except as permitted under G.S. 53-277, the practice of making deferred deposit transactions shall be unlawful.'

SECTION 7. G.S. 53-282 reads as rewritten:

'**§ 53-282. Record keeping; receipt requirements.**

(a) Every person required to be licensed under this Article shall maintain in its offices the following records:

(1) Delayed deposit payment devices currently held for deposit.

(2) A daily transaction journal, or an equivalent record, of both traditional check-cashing and deferred deposit transactions.

(3) The written receipt required by G.S. 53-282(b).

(4) The customer agreement required by G.S. 53-281.

(5) For each customer, a history card, or its equivalent, that reflects the time, date, and amount of each deferred deposit transaction for that customer during the most recent three-year period. The history card shall also state whether each deferred deposit payment device was deposited or redeemed for cash.

(6) Bank statements of the licensee. If the statements are not maintained on the premises of the licensee, the statements shall be made available immediately upon request of the Commissioner.

~~Every person required to be licensed under this Article~~ In addition to the records required in this subsection, each licensee shall maintain in its offices such books, accounts, and records as the Commissioner may reasonably require. The books, accounts, and records shall be maintained separate from any other business in which the person is engaged, and shall be retained for a period prescribed by the Commissioner.

(b) The licensee shall ensure that each customer cashing a ~~check~~ payment device shall be provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the ~~check~~ payment device, and the fee charged.

(c) The Commissioner may examine the books, accounts, and records in order to determine whether the person is complying with this Article and rules adopted pursuant thereto. The cost of the examination shall be paid by the licensee and shall be determined by applying the hourly rate for special examinations adopted by the State Banking Commission by regulation.

(d) The Commissioner may require licensees to submit any data or information, including information concerning deferred deposit transactions, which is reasonably available to the licensee and which the Commissioner deems necessary to the performance of his oversight duties.'

SECTION 8. G.S. 53-283 reads as rewritten:

'**§ 53-283. Prohibited practices.**

(a) No person required to be licensed under this Article shall do any of the following:

(1) Charge fees in excess of those authorized under this ~~Article.~~ Article or originate, process, arrange, or accept or transmit applications for deferred deposit transactions for which the fees exceed those permitted in this Article.

(2) Engage in the business of making loans of money, or extensions of credit, or discounting notes, bills of exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items, except as expressly provided by G.S. 53-281.

(3) Use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation.

(4) Conduct business at premises or locations other than locations licensed by the Commissioner.

(5) Engage in unfair, deceptive, or fraudulent practices.

(6) Cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained

appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.

(7) Use or threaten to use the criminal process to collect on a payment device in a deferred deposit transaction.

(8) Make more than one deferred deposit transaction to a customer at the same time or accept or hold more than one deferred deposit payment device from a customer at the same time.

(9) In conjunction with another person or entity, originate, arrange, process, or accept or transmit an application for a deferred deposit transaction that, except for federal preemption of State law, would be unlawful under this Article.

(10) Use any device or subterfuge to evade the requirements imposed on deferred deposit transactions by this Article.

(11) Obtain, or seek to obtain from a customer, a waiver of any of the rights or protections imposed by this Article.

(12) Fail to promptly, and in any event within 24 hours, report deferred deposit transactions to the database established by the Commissioner pursuant to G.S. 53-291 when such database is operational.

(b) A violation of any of the provisions of this section or G.S. 53-281 shall constitute an unfair trade practice under G.S. 75-1.1.'

SECTION 9. G.S. 53-284(a) reads as rewritten:

'**§ 53-284. Suspension and revocation of license; grounds; procedure.**

(a) The Commissioner may suspend or revoke any license or licenses issued pursuant to this Article if, after notice and opportunity for hearing, the Commissioner issues written findings that the licensee has engaged in any of the following conduct:

(1) Violated this Article or applicable State or federal law or rules.

(2) Made a false statement on the application for a license under this Article.

(3) Refused to permit investigation by the Commissioner authorized under this Article.

(4) Failed to comply with an order of the Commissioner.

(5) Demonstrated incompetency or untrustworthiness to engage in the business of check cashing.

(6) Been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(7) Failed to comply with the Commissioner's request for assistance in resolving a complaint.

(8) Failed to cooperate with any investigation conducted by the Commissioner.'

SECTION 10. G.S. 53-286 reads as rewritten:

'**§ 53-286. Civil penalties and restitution.**

(a) The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties shall not exceed one thousand dollars ($1,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers.

(b) The making or collecting of any deferred deposit transaction agreement which violates any provision of this Article or rule adopted thereunder, except as a result of accidental or bona fide error of computation, shall be void. The licensee or any other party acting by or through a licensee shall have no right to collect, receive, or retain any principal or charges whatsoever with respect to the transaction.'

SECTION 11. Article 22 of Chapter 53 of the General Statutes is amended by adding the following sections to read:

'**§ 53-290. Arbitration agreements.**

(a) A deferred deposit transaction may not include terms that require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(b) Subject to subsection (c) of this section, subsection (a) of this section shall not be construed as limiting the rights of the customer and the lender to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(c) No provision of any deferred deposit transaction shall be applied or interpreted so as to bar a customer from bringing an action in an appropriate court of competent jurisdiction, pursuant to this Article or any other provision of law, for damages or other relief in connection with any alleged violation of this Article or any other law.

(d) Subsections (a) and (c) of this section shall not apply to the extent such State law limitations are preempted by federal law or regulation.

'**§ 53-291. Database for reporting of deferred deposit transactions.**

On or before May 1, 2002, the Commissioner shall implement a common database with real-time access through an Internet connection for check-cashing services that offer deferred deposit transactions, as provided in this section. The Commissioner may contract with a private vendor at the Commissioner's discretion. The database must be accessible to the Commissioner and licensees to verify whether any deferred deposit transactions are outstanding for a particular customer in connection with a deferred deposit transaction involving that customer and may not be used for any other purpose. Licensees shall submit such data before entering into each deferred deposit transaction and upon the repayment of each deferred deposit transaction in such format and with such identifying information as the Commissioner shall require, including the drawer's name, address, drivers license number, amount of the transaction, date of transaction, the date that the transaction is paid off, and such additional information as may be required by the Commissioner. All information provided under this section shall be maintained by the Commissioner as confidential to be used only for the purposes specified in this Article, shall not be subject to public inspection, and shall not be a public record under Chapter 132 of the General Statutes. The Commissioner may impose a fee not to exceed one dollar ($1.00) per transaction to access the database. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying in good faith on information contained in the database. The Commissioner may adopt procedures to administer and enforce the provisions of this section and to assure that the database is used by licensees in accordance with this section.

'**§ 53-292. Choice of laws.**

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 104

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

S104-ARO-59 [v.1]

A choice of law provision in a deferred deposit transaction contract which provides that the contract is to be interpreted pursuant to the laws of another state is against the public policy of this State and therefore void and unenforceable if the party against whom enforcement of the choice of law provisions is sought is a resident of this State at the time the contract is entered into. This provision may not be varied by agreement of the parties.

'**§ 53-293. Severability.**

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of the Article shall not be affected thereby.'

SECTION 12. The Commissioner of Banks shall conduct appropriate examinations or surveys and report to the 2003 General Assembly on the practice of deferred deposit transactions. The Commissioner of Banks, in consultation with the Attorney General, shall report the Commissioner's findings and recommendations, including legislation, to the 2003 General Assembly on or before April 1, 2003.

SECTION 14. This act becomes effective October 1, 2002, and applies to transactions made on or after that date."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 104

Judiciary I Committee Substitute Adopted 4/23/01

PROPOSED HOUSE COMMITTEE SUBSTITUTE S104-CSRO-49 [v.2]

8/26/2002 8:30:40 PM

Short Title: Regulate Deferred Deposit. (Public)

Sponsors:

Referred to:

February 8, 2001

A BILL TO BE ENTITLED

AN ACT TO REGULATE DEFERRED DEPOSIT TRANSACTIONS AND TO PROVIDE ADDITIONAL CONSUMER DISCLOSURES AND PROTECTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 53-275 reads as rewritten:

"**§ 53-275. Definitions.**

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

(1) "Cashing" means providing currency for payment instruments, but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.

(2) "Check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.

(3) "Commission" means the State Banking Commission.

(4) "Commissioner" means the Commissioner of Banks.

(4a) "Deferred deposit transaction" means a check-cashing or similar loan transaction in which a person pays a cash advance to a consumer in return for a check dated on the date it was written and agrees to hold the check for a period of days prior to deposit or presentment, or accepts a postdated check and agrees to hold the check for deposit or presentment at least until the date written on the check. The term shall also include any such arrangement in which a person pays a cash advance in return for an authorization from a consumer for a draft or electronic debit rather than a check.

(4b) "Lender" means any person or entity that offers or makes a deferred deposit transaction, arranges a deferred deposit transaction for a third party, or acts as an agent for a third party, regardless of whether the

third party is exempt from licensing under this Article or whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party. Notwithstanding that a bank, savings institution, credit union, or farm credit system may be exempted by federal law from this Article's provisions related to interest rate, finance charges, and licensure, all other applicable provisions of this Article apply to both a deferred deposit transaction and a deferred deposit lender.

(5) "Licensee" means a person or entity licensed to engage in a check-cashing business under this Article.

(5a) "Loan amount" means the amount financed as defined in regulation Z of the federal Truth in Lending Act, (12 C.F.R. 226.18(b).

(6) "Person" means an individual, partnership, association, or corporation."

SECTION 2. G.S. 53-276 reads as rewritten:

"**§ 53-276. License required.**

No person or other entity may engage in the business of cashing checks, drafts, or money orders for ~~consideration~~ consideration, nor engage in the business of making deferred deposit transactions without first obtaining a license under this Article. No person or other entity providing a check-cashing service may avoid the requirements of this Article by providing a check or other currency equivalent instead of currency when cashing payment instruments. "

SECTION 3. Article 22 of Chapter 53 of the General Statutes is amended by adding the following new sections to read:

"**§ 53-281.1. Deferred deposit transactions permitted.**

Lenders may make deferred deposit transactions pursuant to the following requirements:

(1) The face amount of the deferred deposit check may include a fee but the principal loan amount shall not exceed three hundred dollars ($300.00).

(2) Each deferred deposit check cashed by a lender shall be deemed to be a loan and shall be documented by a written agreement as provided in G.S. 32-281.2.

(3) A lender shall not directly or indirectly charge a fee or other consideration in excess of fifteen percent (15%) of the loan amount.

(4) No check cashed under the provisions of this section shall be repaid by the proceeds of another check cashed by the same lender or any affiliate of the lender. A lender shall not, for any consideration, renew or otherwise extend any deferred deposit check or withhold the check from deposit for any period beyond the time set forth in the written agreement, except as allowed under G.S. 53-281.4."

"**§ 53-281.2. Written agreement and disclosures required for deferred deposit transactions.**

(a) Each deferred deposit transaction shall be documented by a written agreement signed by the borrower and the lender. A legible copy of the agreement shall be provided to the borrower.

(b) The written agreement shall contain:

(1) The name and address of the borrower.

(2) The name, local street address and telephone number of the lender.

(3) The transaction date, which shall be prominently labeled.

(4) The loan amount as defined in G.S. 53-275(4b).

(5) The amount of any fees charged, expressed as both a dollar amount and as an effective annual percentage rate (APR).

(6) The maturity date, which shall be no less than fourteen (14) days nor more than sixty (60) days after the transaction date.

(7) The following notices immediately above the borrower's signature line in at least ten-point type: **THIS TRANSACTION IS NOT MEANT TO MEET LONG-TERM FINANCIAL NEEDS AND SHOULD BE USED ONLY TO MEET SHORT-TERM CASH NEEDS. YOU HAVE THE RIGHT TO CANCEL THIS TRANSACTION AT ANY TIME BEFORE 5:00 PM ON THE NEXT BUSINESS DAY AFTER THE TRANSACTION DATE SHOWN ABOVE. TO CANCEL YOU MUST RETURN ALL OF THE CASH PROCEEDS TO THE LENDER. THE LENDER WILL REFUND TO YOU ALL FEES IF YOU CANCEL THIS TRANSACTION.**

(c) The written agreement shall be accompanied by a separate paper which contains all disclosures required by the federal Truth in Lending Act (12 USC §1601,et seq.) and the federal Reserve Board Regulation 'Z' and the consumer education information. The consumer education information shall be prepared by the Commissioner and shall inform the consumer of matters such as the complaint process through the Commissioner's Office, the relative cost of short-term consumer loans, the availability of other forms of credit, the right of the customer to elect a repayment plan, and any other matters the Commissioner thinks are necessary or beneficial to consumers.

(d) The written agreement shall not contain any of the following provisions:

(1) A hold harmless clause.

(2) A confession of judgment clause.

(3) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the Commissioner, which approval shall not be unreasonably withheld.

(4) Any provision in which the borrower agrees not to assert a claim or defense arising out of the contract.

(5) Any waiver by the borrower of any provision of this Article."

"**§ 53-281.3. Deferred deposit transactions limited.**

(a) A lender shall not knowingly enter into a deferred deposit transaction with a borrower whom the lender knows has other transactions in the aggregate exceeding the principal amount of three hundred dollars ($300.00) or knows would exceed three

transactions regardless of value. It shall be mandatory for the lender to meet both of the following conditions:

(1) The borrower signs a certification in substantially the following form: **I UNDERSTAND THAT NORTH CAROLINA LAW PROHIBITS A PERSON FROM HAVING MORE THAN $300.00 IN DEFERRED DEPOSIT CHECKS OUTSTANDING AT ONE TIME. I OWE THE FOLLOWING DEFERRED DEPOSIT AMOUNTS AND NO OTHERS:** (Write the amount you owe and the names of the licensees or write 'NONE'). This certification shall not constitute the basis of a criminal prosecution under G.S. 14-100.

(2) The lender verifies the accuracy of this certification through reasonable means, including a manual investigation or an electronic query of all of the lender's own records, and also available databases approved by the Commissioner.

(b) A lender must pay the proceeds from a deferred deposit transaction to the borrower in the form of a check from the lender. Upon the borrower's request, the lender may cash the lender's check if the lender has cash available to do so. The borrower shall not be charged an additional finance charge or fee for cashing the lender's check."

"**§ 53-281.4. Mandatory repayment plan.**

If the borrower elects and so informs the lender at any time prior to the maturity date of the deferred deposit transaction, the borrower may declare an inability to repay and the lender shall accept a mandatory repayment plan with the following terms:

(1) The borrower and the lender sign a repayment plan agreement providing for four equal installments due on each of the borrower's next four pay days, with at least 14 days between the installments.

(2) The borrower agrees not to enter into any additional deferred deposit transactions during the term of the repayment plan.

(3) Upon completion of the plan, the lender shall report the borrower's positive payment history to consumer credit reporting agencies.

(4) Upon completion of the plan, the borrower is prohibited from entering into any deferred deposit transactions with any lender for at least one pay period.

(5) The lender may collect a fifteen dollar ($15.00) processing charge for each repayment plan."

"**§ 53-281.5. Prohibited practices regarding deferred deposit transactions.**

In addition to the prohibited practices under G.S. 53-283, the following are prohibited regarding deferred deposit transactions:

(1) Taking or attempting to take any security other than the borrower's instrument.

(2) Taking or attempting to take more than a single check or other instrument from the borrower in connection with a single transaction.

(3) Selling, offering, or soliciting any application for credit insurance in connection with a transaction.

(4) Tying the transaction to any other transaction, offer, or obligation of the borrower.

(5) Failing to comply with the Commissioner's request for assistance in resolving a complaint.

(6) Using or threatening to use criminal process to collect a dishonored check, unless fraud is involved.

(7) Assigning or selling to another lender an instrument taken in connection with a deferred deposit transaction unless the instrument bears the following endorsement: **'THIS INSTRUMENT WAS GIVEN BY ITS MAKER TO SECURE A DEFERRED DEPOSIT TRANSACTION UNDER G.S. 53-281.1 AND THE ASSIGNEE IS DEEMED TO HAVE KNOWLEDGE OF AND SHALL BE BOUND BY THE TERMS AND CONDITIONS OF THE LOAN AGREEMENT BETWEEN THE BORROWER AND THE ORIGINAL LENDER.'**

(8) Failing to report accurately and promptly a borrower's positive repayment activity under G.S. 53-281.4 to credit reporting agencies.

(9) Failing to collect and provide information regarding the number, total, and average transaction amounts and any other information the Commissioner may request."

SECTION 4. G. S. 53-286 reads as rewritten:

"The Commissioner may order and impose civil penalties upon any person required to be licensed under this Article for violations of this Article or rules adopted thereunder. Civil penalties may also be imposed upon persons acting on behalf of a licensee or any other person who violates this Article. Civil penalties shall not exceed ~~one thousand dollars ($1,000)~~ ten thousand dollars ($10,000) per violation. All civil money penalties collected under this Article shall be paid to the county school fund. The Commissioner may also order repayment of unlawful or excessive fees charged to customers. The imposition or pendency of any order or penalty by the Commissioner shall not limit the right of any customer to pursue any available civil remedies."

SECTION 5. This act becomes effective October 1, 2002, and applies to transactions made on or after that date.

SENATE BILL 104:
Regulate Deferred Deposit.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	
Date:	August 20, 2002	**Summary by:**	Karen Cochrane Brown
Version:	Proposed Committee Substitute (S104-CSRO-49 [v.1])		Staff Attorney

SUMMARY: ***The Proposed Committee Substitute for SB 104 would reauthorize regulation of deferred deposit transactions. Deferred or delayed deposit transactions were previously authorized under provisions of the Check Casher Act. Those provisions expired on August 31, 2001. This committee substitute would create additional consumer protections, including mandatory repayment plans and prohibited practices for lenders who make deferred deposit loans.***

CURRENT LAW: Article 22 of Chapter 53 of the General Statutes requires that certain persons who cash checks for a fee must be licensed as a check cashing business. Prior to August 31, 2001, G.S. 53-281 allowed licensed check cashing businesses to advance cash in amounts up to $300.00, for postdated or delayed deposit checks. The fee for this service was 15% of the face amount of the check. The deposit could be delayed for up to 31 days. G.S. 53-281 expired on August 31, 2001, and since that time North Carolina law has not permitted these so-called "payday loans". However, several businesses have continued to operate by entering into agency agreements with national banks to fund the loans. North Carolina is preempted by federal law from regulating national banks.

BILL ANALYSIS:

Section 1. – Adds several new definitions to the Check Casher Act to clarify provisions relating to the renewed authorization for deferred deposit transactions. One important addition is the term "lender" which includes any person or entity that offers or makes a deferred deposit loan or acts as an agent for a third party that makes such loans even if the third party is exempt from the licensing requirements. The definition also provides that although national depository institutions are exempt from interest rate, finance charge and licensure provisions of the Act, they are subject to all other provisions when they act as a deferred deposit lender.

Section 2. – Adds a licensing requirement for businesses engaging in making deferred deposit transactions. The Commissioner of Banks is charged with issuing licenses and administering the Article.

Section 3. – Adds several new sections to Article 22, which reauthorize and regulate deferred deposit transactions. These transactions are permitted subject to the following requirements:

- Principal amount of the loan may not exceed $300.00;
- Lender may not charge a fee in excess of 15% of the loan amount;
- Loan may not be repaid by the proceeds of another deferred deposit loan;

- Loan must be documented by a written agreement signed by the borrower and the lender;
- The amount of the fees charged must be expressed both as a dollar amount and as an effective annual percentage rate (APR).
- The maturity date may not be less than ten days nor more than sixty days from the transaction date;
- A notice advising the borrower of the right to cancel the transaction must be included in 10-point type;
- The agreement must be accompanied by a Regulation 'Z' disclosure, as provided by the federal Truth in Lending Act.
- The agreement may not contain a hold harmless clause, a confession of judgment clause, a mandatory arbitration clause, a provision in which the borrower agrees not to assert a claim or defense, or a provision in which the borrower waives any provision of the Article;
- Lenders may not enter into transactions with borrowers who have outstanding loans in excess of $300.00;
- Borrowers who cannot repay may elect to enter into a mandatory repayment plan providing for four equal installments due on the borrower's next four paydays, with at least 14 days between installments. The lender may collect a $15.00 processing charge for each repayment plan;
- Prohibited practices related to deferred deposit transactions include: taking security other than the borrower's check, taking more than one check in connection with a single transaction, selling or offering credit insurance, tying the transaction to any other transaction, using or threatening to use criminal process, unless fraud is involved, assigning or selling the check unless the required endorsement is attached, failing to report positive repayment activity to credit reporting agencies, failing to assist or provide information to the Commissioner of Banks.

Section 4. – Increases the maximum amount of civil penalties which may be imposed for violation of the Act from $1,000.00 to $10,000.00 per violation.

The act would become effective October 1, 2002 and apply to transactions made on or after that date.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 16, 2002

TO: House Finance Committee

FROM: Adam Levinson and Chloe Gossage
Fiscal Research Division

RE: Proposed Committee Substitute for SB 104

FISCAL IMPACT

	Yes (X)	No ()	No Estimate Available ( )		
	FY 2002-03	**FY 2003-04**	**FY 2004-05**	**FY 2005-06**	**FY 2006-07**
Revenue					
County School Funds	**$9,500**	**$9,500**	**$9,500**	**$9,500**	**$9,500**
Expenditures					
Commissioner of Banks	**0**	**0**	**0**	**0**	**0**
GENERAL FUND					
Correction	**Repeated violations may incur criminal penalties.*				
Judicial	**Repeated violations may incur criminal charges.*				
ADDITIONAL PRISON BEDS**	**Repeated violations may incur criminal penalties.*				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Office of State Commissioner of Banks, Department of Correction; Judicial Branch

EFFECTIVE DATE: October 1, 2002

***This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY:

The proposed committee substitute for SB 104 (hereinafter PCS) reinstates the authorization for payday lending that had been authorized originally by the North Carolina (NC) General Assembly in 1997 and extended in 2001.[1] In reauthorizing payday lending, the PCS also redefines the cashing of postdated and delayed deposit checks as "deferred deposit transactions," a term that was not present in the 1997 legislation, and identifies as "lenders" persons or businesses acting as agents for third parties who may be exempt from licensing under the act. The PCS also adds to statute a number of procedural requirements and limitations with which deferred deposit lenders must comply in order to avoid possible criminal and civil penalties. Finally, by specifying that civil penalties imposed for violations may be imposed "upon persons acting on behalf of a licensee," the PCS extends the statutory requirements to a larger group of businesses than had been identified in the former legislation.

ASSUMPTIONS AND METHODOLOGY:

County School Funds

Statute directs that all civil money penalties imposed by the Commissioner under the act shall be paid to the county school fund. According to the Commissioner, since 1997 approximately $38,000 in civil penalties for violations of payday lending laws have been collected. The Commissioner does not anticipate that the reauthorization would lead to more violations of the law than occurred from 1997-2001. Assuming equal distribution of those penalties across that period of time, and a frequency and severity of future penalties that is consistent with historical trends, this data suggests that approximately $9,500 will be collected in each of the next five fiscal years. No estimate is available for the distribution of this revenue across counties.

Commissioner of Banks

The Office of the Commissioner of Banks (Commissioner) is authorized in statute to regulate the check cashing and deferred deposit industry in NC and to charge fees to recover the costs of licensure and investigations.[2] According to the Commissioner, this regulatory function was supported completely by fees from 1997 to 2001. Beginning October 1, 2002, when the new legislation takes effect, the Commission will once again operate on a completely fee-supported basis. While the reauthorization of payday lending, and accompanying regulatory function, will certainly increase the activity of the Commissioner, the PCS will therefore have no net fiscal impact on the Commissioner.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts. Based on the most recent population projections and estimated

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[1] S.L. 1997-391, "An Act to Regulate the Check-Cashing Business;" S.L. 2001-323, "An Act to Delay the Sunset of the Provisions of the Check Casher Act Authorizing Postdated or Delayed Deposit Checks."

[2] G.S. 53-278

available prison bed capacity, *there are no surplus prison beds available for the five year Fiscal Note horizon and beyond.*

The proposed legislation would create a new category of license for lenders offering deferred deposit transactions. These lenders would be subject to G.S. 53-276 and 53-287, making violation of the new statute a Class I felony. Since this is a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. The Office of the N.C. Commissioner of Banks anticipates that most violations will not result in criminal charges or convictions.

Using available data on average sentences for Class I felons, the Sentencing Commission estimates that if this bill resulted in 5 additional convictions for Class I felonies each year, there would be the need for 1 additional prison bed in the first year and 2 additional beds in the second year due to active sentences and post-release sentencing revocations. While only 9 percent of Class I felons served active sentences (and thus impact prison beds) in FY 2000-01, another 37 percent served intermediate sentences and 54 percent served community sentences. In FY 2000-01, the average operating cost for a prison bed was $65.29 per day, and the average length of sentence for a Class I felon was seven months. Also in FY 2000-01, the average cost of an intermediate punishment was $12.69 per offender per day, and the average cost of a community punishment was $1.87 per offender per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The PCS provides various regulations for deferred deposit transactions and creates a new Class I felony offense for engaging in the business of making deferred deposit transactions without first obtaining a license. While under current G.S. 53-287, any violation of G.S. 53-276 by a person required to obtain a license under Article 22 is a Class I felony, deferred deposit transactions are not currently permitted by law. As a result, there could be some additional workload for the courts due to violations arising under the bill.

The AOC does not have an offense code for the Class I felony under current G.S. 53-287, which is an indication that charges or convictions occur infrequently. The N.C. Commissioner of Banks website indicates that 233 licensed check-cashing businesses owned 1,131 check-cashing locations or branches across the State during 2000. Of those 233 check-cashing businesses, 165 check-cashing businesses owned locations that conducted either deferred deposit transactions only or both check cashing and deferred deposit transactions. The Office of the N.C. Commissioner of Banks also indicates that there were 260 licensed check-cashing businesses across the state as of August 31, 2001, 50 businesses reported for engaging in unlawful deferred deposit transactions as of May 21, 2002, and 13,805 deferred deposit transactions violations between August 1998 and August 2001.

While the data provided by the Office of the N.C. Commissioner of Banks suggest that there are numerous locations or branches owned by various check-cashing businesses across the State that could result in frequent violations under the bill, the Office does not expect many violations to arise. The Office expects that most check-cashing businesses engaging in deferred deposit transactions will comply with the law initially, or, if caught engaging in these transactions unlawfully, will then comply with the law (i.e., apply for the required license) and pay applicable civil penalties imposed by the Commissioner. The Office indicated that, although available by law, criminal penalties do not typically result from these violations. To the extent that check-cashing businesses conducting deferred deposit transactions comply with the law and civil penalties are imposed by the Commissioner rather than criminal penalties pursued, the AOC would not anticipate many new cases under the bill.

SOURCES OF DATA: Office of the NC Commissioner of Banks; Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; and Office of State Construction.

TECHNICAL CONSIDERATIONS: The effective date for this legislation is October 1, 2002. Typically, criminal penalties are effective December 1, 2002, to give the court system time to adjust to the new statutes.

THE NEWS&OBSERVER
MONDAY, AUGUST 26, 2002

Who's paying for payday lending?

BY ELLEN SCHLOEMER

RALEIGH – To listen to the payday lending industry, North Carolina is overrun by unfeeling, paternalistic churches and community groups trying to prevent people in financial crisis from getting help from caring, altruistic payday lenders. And the industry's lobbyists say it's only a happy coincidence that selfless payday lenders in North Carolina raked in more than $100 million in fees in a recent year, when they really were just trying to help people.

Calling churches, social service groups and community advocates "paternalistic" to oppose payday loans as they exist today implies that we don't understand the needs of the poor or vulnerable, the people whom we serve every day. We do know them, and we know that in most cases getting a payday loan makes their lives worse, not better.

POINT OF VIEW

Here's what else we know:

- Payday loans are unfair. Consumers may need short-term credit to cover emergencies, but they shouldn't be charged fees equaling 500 percent interest to get it. Payday lenders say they must charge high fees because of the risk they take making loans. But companies that offer credit cards to people with bad credit charge around 25 percent interest — are payday loans really 20 times riskier?
- Payday loans trap people in a cycle of debt. They typically must be repaid in full in two weeks, which is far too soon for most borrowers. So lenders encourage them to take out new loans — the borrower gets no "new money" but does pay another fee to pay off the previous loan. Fees pile up, and the debt cycle gets worse.

In North Carolina, the average payday borrower took out 14 loans in 2000. Many consumers end up in worse financial shape than when they started. One of our church members, for example, will end up paying $1,780 to pay off $700 in payday loans.

- Social services groups are harmed by payday lending. Trapped in debt, many payday customers are turning to community groups and churches for food, money and other aid to deal with their desperate financial straits. (A Kansas City church recently found that 80 percent of visitors to its food pantry were in debt to payday lenders.) It is unconscionable that underfunded, understaffed nonprofits should be expected to handle a growing flood of needy people, so that payday lenders can pocket millions of dollars in fees.
- We need economic fairness, not the rule of the jungle. Payday lenders are taking advantage of a situation that is not just of their own making. As a society, we need to ensure that people earn a living wage, so they aren't thrown into financial crisis whenever an unexpected emergency hits. And banks need to step up here too, by extending overdraft protection to customers with less-than-perfect credit. (By the way, consumers who pay off payday loans on time don't improve their credit rating, because lenders don't report this to the credit bureaus. Talk about rigging the game in your favor!)

Payday lenders are operating in bad faith. Since the state law permitting payday lending expired in 2001, many payday lenders have dubbed themselves "facilitators" for out-of-state banks, and continue to do business here. And now they have gotten some state legislators to introduce last-minute "reform" legislation stacked with even more industry-friendly loopholes. Legislation must not be fast-tracked through the General Assembly without public discussion and thoughtful consideration of alternatives that would provide consumers with fair, affordable credit and lenders with a reasonable profit.

Ellen Schloemer is the director of social ministries at St. Raphael Catholic Church and a member of the Just Money network of faith communities.

MINUTES

HOUSE COMMITTEE ON FINANCE
August 28, 2002

The House Committee on Finance met at 8:30 a.m. on Wednesday, August 28, 2002 in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Blust, Capps, Cox, Decker, Dedmon, Eddins, Edwards, Gibson, Gray, Hackney, Hurley, Johnson, McCombs, McMahan, Morris, Pope, Rayfield, Weiss, Willingham, Womble, and Cunningham.. Staff persons present included Trina Griffin, Martha Walston, Richard Bostic, Canaan Huie, Martha Harris, and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris, and Glenda Jones. The Agenda and Visitor Registration Sheet are attached and made a part of these minutes. **(Refer to Attachments 1 and 2).**

Representative Wainwright called the meeting to order and introduced the Pages, Gary Quiller of Wake County, and Joshua Freeman of Granville County, and Sergeants-at-Arms, Dusty Rhodes, Walter Spell, Bob Fowler, and Bill Freeman. The committee considered the following bills.

SENATE BILL 1146, A BILL TO BE ENTITLED AN ACT CONCERNING VOLUNTARY SATELLITE ANNEXATION BY VARIOUS MUNICIPALITIES. Representative Buchanan was recognized to speak on the bill. The bill would allow the Cities of Claremont, Concord, Conover, Newton, Sanford, and Southport, and the Towns of Maiden, Midland, Swansboro, and Warsaw to annex satellite areas without meeting one of the five standards required for voluntary satellite annexation. The named cities and towns would not have to meet the standard that limits the size of the area within the satellite corporate limits. Representative Gibson moved for a favorable report. The bill was given a favorable report. **The Committee Report, Bill, and Bill Analysis are included in Attachment 3.**

The next item for discussion was **HOUSE BILL 1726, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.** Representative Allen presented the bill to the committee. The bill authorized the construction of numerous projects by the University of North Carolina. The projects were financed through revenue bonds and special obligation bonds, not appropriations from the General Fund. Representative Allen moved to amend the bill on page 2, line 34. **(Refer to Attachment 4).** This was a request from Representative Haire to include the Student Recreation Center as part of

the capital improvement projects for Western Carolina University totaling $11,500,000. Representative Allen moved for the adoption of the amendment. Representative Edwards asked if this appropriation had come through the Board of Governors. Dwayne Pinkney, Associate Vice President for Finance for the University of North Carolina responded that the appropriation had not come through the Board of Governors and the board would need to approve this project. Representative Edwards asked if this was a change from the normal procedure. Rob Nelson, Associate Vice President for Finance for the University of North Carolina, stated that the campuses were asked to submit their projects to the board for the fiscal year. They were asked to submit an 18-month schedule of those projects that would start construction during the fiscal period. This project's time schedule was on the cusp, early July of the next fiscal year. The Board considered these projects in February or March and drew the line at June 30. That was why it was not included in their package. If the committee decided to add this project, the University would seek the approval of the Board of Governors. Representative Haire was present and responded to questions from the members. He stated that this amendment met the same criteria as the other liquidated projects in the bill. The reason for bringing the bill forward at this time, was to allow Western University to move along with the project. In the event the next legislative session was an extended session, this project would not be delayed. Representative Pope asked what was the source of funds for the student recreation center at Western Carolina. Mr. Nelson stated that Western Carolina had represented to the Board that the project was supported by student debt service fee. Representative Allen asked if this amendment would take some of the power from the university system. Mr. Nelson said it would not. Representative Blust asked why there were no projects for NC A&T and the UNCG. Mr. Nelson responded that UNCG and A&T had projects that were considered in 2001. UNCG had a project for a parking deck and A&T had three projects. Over a two to three-year period, all 16 campuses come through this process. Representative Willingham noted that some of the funds were coming from the general fund, and he wanted to know where the other funds were coming from. Mr. Pinkney responded that there were projects in the package that the campuses would request from the General Assembly General Fund. Money from the General Fund supported the operating cost of those facilities, and those facilities were used for academic purposes. The approval of the bill today, would not obligate the General Assembly in any way to fund those requests that would be coming forth over the life of these projects. The committee adopted the amendment.

The committee continued the discussion of the bill. Representative Pope asked how much of the overhead receipts are obligated and for how long. Mr. Nelson responded that the funds are obligated at an estimate of $9.5 million a year for those projects that are supported by overhead receipts. The availability projection for next year is $126 million, the amendment in the House budget takes away $10 million. Ninety percent of the funds are available after you commit the debt service as authorized by this bill. Jim Newlin of Fiscal Research stated that the committed debt service at NC State and Chapel Hill, which represented the majority of overhead receipts, was $10.1 million annually. In this bill, at those universities, the proposed debt service once you get three or four years down the road, would be $13.7 million per year. If this bill passed, he

estimated that just under $24 million dollars a year would be obligated from overhead receipts. He stated that the $10.1 million were existing debt agreements. Representative Buchanan moved for a favorable report of the Proposed Committee Substitute as amended, and an unfavorable report for the original bill. The committee voted in favor of the motion. **The Committee Report, PCS, Bill Analysis, and Fiscal Note are included in Attachment 5.**

HOUSE BILL 1665, A BILL TO BE ENTITLED AN ACT TO AMEND TAX LAWS RELATED TO INTERSTATE AIR COURIERS. This bill made numerous changes to tax laws regarding interstate air couriers including the following: a new definition of "hub" for sales tax purposes; and an extension of the Bill Lee Act until January 1, 2010 for certain interstate air couriers. Representative Buchanan moved for the adoption of the Proposed Committee Substitute for discussion. Representative Gray was recognized to speak on the bill. He stated that the bill would extend and clarify provisions of the Bill Lee Act that deals with the Fed Ex project at the Greensboro Airport. The General Assembly must extend the time limits of the Bill Lee Act so that North Carolina could honor the commitment it made to FED Ex in 1998. Representative Wainwright recognized the public speakers to comment on the bill.

Lucy Smith from Summerfield spoke against additional incentives to Fed Ex. Roch Smith, Jr. of Greensboro spoke against the bill, particularly Section 3. This section would allow Fed Ex to exclude part-time jobs from the wage calculation. It would allow Fed Ex to pay less than the minimum wage standard and still qualify for tax credits. The intent of the Bill Lee Act was to insure that we spent incentives only on companies that provided jobs that paid a living wage. A court challenge had been filed, and there was a possibility that the court might reject the FAA's approval of this plan. Canaan Huie, Staff Attorney, asked if he could clarify a point made by Mr. Smith regarding the wage standard that was in the bill. The comment was made that interstate air couriers could exclude part-time job. Mr. Huie stated that the bill read that way in the first edition of the bill. The PCS before the committee states that a part-time job that offers health insurance will be considered to meet at least the applicable average weekly wage. The part-time job still must be considered in making the calculation. If the part-time job with health insurance had a wage that was less than the applicable average weekly wage, the applicable average weekly wage will be used in making the calculation. If the wage was higher, it will use the higher wage in making the calculation. If the part-time job did not have health insurance, the actual wage will be used in making the calculation. Mr. Walt Druce, of Guilford County, stated that the Hub would not generate more than 1500 jobs. Attorney David Clark of Greensboro, stated that there was no justification for the bill, and it should not be extended. This bill would exempt Fed Ex from the requirement to hire minorities, and competitive bidding. Ms. Christine Peeler of Greensboro, expressed concern for the quality of life, and stated that the extension was unfair to other businesses. Supporting documents to her comments are included in **Attachment 6.** Jean Black, a homeowner in Greensboro, spoke in opposition to the bill.

Chairman Wainwright stated his intent to continue the discussion of the bill after the session. Representative Pope suggested that the committee continue to meet now, rather than after the session. Representative Allen moved to extend the meeting time one hour past the normal adjournment time of 9:50 a.m. The motion was approved and the meeting continued.

Representative Gray was recognized and stated that he took offense to comments from Mr. Roch Smith regarding campaign contributions to members of the legislature from Fed Ex and its lobbyists. Mr. Smith apologized to Representative Gray and said that him comments were meant to question inaccurate lobbyist reports from Fed Ex lobbyists that do not show campaign contributions that were made to members of the legislature. This bill started with an attorney for Fed Ex who was not a registered lobbyist.

Representative Blust stated that a cost benefit analysis that realistically looked at what it was going to cost in noise mitigation in the future had not been done. Many houses would be bought through the process of law, and those costs were not being calculated. A cost estimate should be done for future costs to see if the Fed Ex project was worth doing.

The Chair recognized Representative Gray to explain the bill. Representative Gray stated that Fed Ex would not sign the lease to get started if the tax credits expire before they were able to get the project up and running. The project would have a major impact on the central part of North Carolina. This project had the potential to turn around some of the jobs that were lost in textile, furniture, tobacco, and our other manufacturing industries. Representatives Decker, Womble, Rayfield, Jarrell, and Cox spoke in support of the bill. Representative Capps spoke in opposition to the bill. Representative Pope felt that the Bill Lee Act violated the constitution. He was not in favor of special incentives to a few businesses. Businesses should come to North Carolina because it is a good place to do business, not because of this act. Representative Gray stated that Fed Ex would have 500 full-time positions and 1000 part-time jobs. Part-time employees would be given full-time benefits. One of the reasons Fed Ex picked Greensboro, was the number of colleges in the Greensboro area. Fed Ex hoped to get college students as part-time workers.

Representative Weiss noted that the Fiscal Note stated that it was possible that modification to the wage standard would enable some companies not currently eligible for the Lee Act credits, to become eligible. She asked Sabra Faires of the Department of Revenue about the fiscal impact if these companies were to become eligible. Ms. Faires said they did not have an estimate because the change applied to all companies and not just interstate couriers. If part-time benefits were provided, they would fall into the same category. Representative Weiss did not support the bill.

Representative Womble and Representative Decker moved for a favorable report of the PCS. The PCS was given a favorable report. **The Committee Report, PCS, Bill Analysis, and Fiscal Note are included in Attachment 7.**

The Chair asked the members of the NASCAR subcommittee to be on standby for a meeting later in the day.

The meeting adjourned at 10:45 a.m.

Respectfully submitted,

Blinda Edwards, Committee Assistant

Representative William Wainwright
Presiding Chair

AGENDA

Attachment 1

House Finance Committee

August 28, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

BILLS TO BE HEARD

HB 1665 Interstate Air Couriers-Bill Lee- Rep. Gray

SB 1146 Various Municipal Satellite Annexations- Sen. Allran

HB 1726 University of North Carolina Nonappropriated Capital- Rep. Hackney

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 28, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rob Nelson	UNC
Dwayne Pinkney	UNC
Rock Smith, Jr.	Citizen, Greensboro
Lucy Smith	Citizen, Summerfield
David M. Clark	
Chris Peeler	
Letitia Withrow	NC State Water
Jonathan Tart	Revenue
Greg Radford	Revenue
Andy Sasol	"
Sabra Faires	Revenue

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 28, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan Harrison	the pink house
Susan Markham	the red house
DAVID BARNES	Poyner + Spruill
KEN MELTON	Alley Associates, INC.
Andy Romanet	NCLM
Alice Garland	EC
DON HOBART	DOC
PERRI MORGAN	NFIB

VISITOR REGISTRATION SHEET

FINANCE — **Name of Committee**

AUGUST 28, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Benson	Capitol Transp
GEORGE WORSLEY	NC STATE UNIV
Mark Fleming	University System
Dwayne Pinkney	
Rob Nelson	
David M. Clark	~~Lorr~~ 125 South Elm St, Greensboro, N.C. 27402
Jean M. Black	4103 O'Briant Pl Greensboro, NC 27410
J Richard Black	4103 O Briant Place Greensboro, NC 27410
Julie Snee	NC Dept. of Commerce
Jim Fain	NC Dept of Commerce
durwood Ingmire	the white house

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ House Committee Substitute for
S.B. 1146 A BILL TO BE ENTITLED AN ACT CONCERNING VOLUNTARY SATELLITE ANNEXATION BY VARIOUS MUNICIPALITIES.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 1146
Finance Committee Substitute Adopted 6/27/02
Third Edition Engrossed 7/3/02
House Committee Substitute Favorable 8/26/02

Short Title: Various Municipal Satellite Annexations. (Local)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT CONCERNING VOLUNTARY SATELLITE ANNEXATION BY VARIOUS MUNICIPALITIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) does not apply to the Cities of Claremont, Concord, Conover, Newton, Sanford, and Southport, and the Towns of Maiden, Midland, Swansboro, and Warsaw.

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

SENATE BILL 1146:
Various Municipal Satellite Annexations

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator. Allran
Date:	August 28, 2002	**Summary by:**	Martha Walston*
Version:	4th Edition		Committee Counsel

SUMMARY: ***Senate Bill 1146 would allow the Cities of Claremont, Concord, Conover, Newton, Sanford, and Southport and the Towns of Maiden, Midland, Swansboro, and Warsaw to annex satellite areas without meeting one of the five standards required for voluntary satellite annexation. The named cities and towns would not have to meet the standard that limits the size of the area within the satellite corporate limits.***

CURRENT LAW AND BILL ANALYSIS:

G.S. 160A-58.1 governs the voluntary annexation by a municipality of noncontiguous property. All property owners in the satellite area may petition a city for voluntary annexation of the noncontiguous property if the property meets the following five standards:

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

The cities of Hickory, New Bern, Statesville, Kenly, Troy, Mt. Airy, Mooresville, Marion, Oxford, and Rockingham and the Towns of Calabash, Catawba, Dallas, Godwin, Louisburg, Mocksville, Pembroke, Rutherfordton, and Waynesville have already eliminated the 5th standard.

Senate Bill 1146 would add the Cities of Claremont, Concord, Conover, Newton, Sanford, and Southport and the Towns of Maiden, Midland, Swansboro, and Warsaw to the list of cities and towns that have eliminated the 5th standard.

*Cindy Avrette contributed substantially to this summary.

Attachment 4

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1726

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

H1726-ALH-85 [v.1]

Date August 28 ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Nesbitt -ALLEN- HAIZE

moves to amend the bill on page 2, 34,
by adding the following:
"Student Recreation Center 11,500,000";

and by adjusting the appropriate totals accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

Attachment 5

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs) for the Committee on **FINANCE.**

☐ Committee Substitute for
H.B. 1726 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1726
PROPOSED COMMITTEE SUBSTITUTE H1726-PCS5452-LA-87

Short Title: UNC Nonappropriated Capital. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The purpose of this act is: (i) to authorize the construction, by certain constituent institutions of The University of North Carolina, of the capital improvements projects listed in this act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

SECTION 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 and Section 5 of this act are as follows:

1.	Appalachian State University	
	Residence Halls Comprehensive Renovations	$12,000,000
2.	East Carolina University	
	Clement Residence Hall Renovations	2,833,000
	West End Dining Hall Supplement	3,357,000
3.	Elizabeth City State University	
	Renovation of Campus Dining Facility	1,178,000
4.	Fayetteville State University	
	Athletic Facilities Improvements	2,766,550

5.	North Carolina State University	
	Soccer, Track, and Softball Complex	4,500,000
	Fire Safety – Residence Halls	1,300,000
	University Apartments for Upperclassmen Housing	77,260,700
	Parking Expansion Projects	1,000,000
6.	The University of North Carolina at Chapel Hill	
	208 West Franklin Street	4,000,000
	Kenan, McIver, Alderman Residence Hall Renovations	10,500,000
	Residence College Phase II	46,500,000
	School of Medicine Research Facilities	77,700,000
	Ramshead Development	12,800,000
	Hot Water Replacement Phase II	5,000,000
7.	University of North Carolina at Charlotte	
	Residence Hall Phase VIII	22,000,000
	Brocker Health Center	7,150,000
	Parking Deck G	8,300,000
8.	The University of North Carolina at Pembroke	
	Surface Parking Lot	275,000
	University Center Expansion	3,000,000
	Improvements to Student Recreation Facilities	600,000
9.	The University of North Carolina at Wilmington	
	University Union Building Expansion and Renovation (Supplemental Funding)	22,400,000
	Parking – 650 Spaces	3,000,000
	Wagoner Hall Renovations	4,000,000
	Residence Hall Renovations	6,000,000
10.	Western Carolina University	
	Hospitality Management Center	8,000,000
	Student Recreation Center	11,500,000
	TOTAL	$358,920,250

SECTION 3. The capital improvements projects listed in this section were authorized in S.L. 2000-03. The capital improvements projects, and their respective costs, authorized by this act to be financed as provided in Section 1 and Section 5 of this act, are as follows:

1. North Carolina State University

	College of Engineering Phase II	$ 8,000,000
	CVM Research Lab Building	14,584,000
	Centennial Campus Building	4,064,000
2.	The University of North Carolina at Chapel Hill	
	Carrington Hall Addition	2,077,900
	Science Complex Phase I	18,037,500
3.	The University of North Carolina at Pembroke	
	Auxiliary Services Complex and Student Bookstore	1,500,000
4.	The University of North Carolina at Wilmington	
	Westside Building Expansion	3,000,000
	TOTAL	$ 51,263,400

SECTION 4. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding, the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

SECTION 5. Pursuant to G.S. 116D-26, the Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing for the projects authorized by this act. The maximum principal amount of bonds to be issued shall not exceed the specified project costs in Sections 2 and 3 of this act plus six million dollars ($6,000,000) for related additional costs, such as issuance expenses, funding of reserve funds, and capitalized interest.

SECTION 6. This act is effective when it becomes law.

HOUSE BILL 1726:
UNC Nonappropriated Capital

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Allen
Date:	August 27, 2002	**Summary by:**	Emily Johnson and Phyllis Pickett Staff Attorneys
Version:	First Edition		

SUMMARY: House Bill 1726 authorizes the construction of numerous projects by The University of North Carolina. The projects will be financed through revenue bonds and special obligation bonds, not appropriations from the General Fund.

CURRENT LAW: There are two types of self-liquidating bonds that may be issued by the Board of Governors of the University of North Carolina. Article 21 of Chapter 116 of the General Statutes authorizes the Board of Governors to issue revenue bonds for the types of projects enumerated in the article. The types of projects for which revenue bonds may be issued include educational buildings, dormitories, recreational facilities, dining facilities, student centers, health care buildings, parking decks, etc. The revenue bonds are payable from rentals, charges, fees, and other revenues generated by the facility. The bonds are not payable from tax revenues.

Article 3 of Chapter 116D of the General Statutes authorizes the Board of Governors to issue special obligation bonds payable with any sources of income or receipts of the Board of Governors or a constituent or affiliated institution, but not including tuition payments or appropriations from the General Fund from State revenues. The bond proceeds could be used for construction, improvement, and acquisition of any capital facilities located at UNC constituent and affiliated institutions. The bonds are not payable from tax revenues.

BILL ANALYSIS:

Section 1. States the purpose of the act to authorize the construction and financing of the capital improvements projects at various constituent institutions of The University of North Carolina. The projects authorized by the bill would not be financed with funds appropriated from the State's General Fund; but may be financed with gifts, grants, receipts, self-liquidating indebtedness, other funds available to the constituent institutions, or a combination of any of those financing methods.

Section 2. Sets out the self-liquidating projects the Board of Governors plans to finance with revenue and/or special obligation bonds. Although the UNC revenue bond act in Chapter 116 does not require the enactment of an appropriation bill, the customary practice for UNC system revenue bond issues has been legislation that lists the specific projects to be financed and their costs.

Section 3. Sets out seven additional capital improvements projects and authorizes the financing of some of the costs of those projects with revenue and/or special obligation bonds. The seven

projects set out in this section were previously authorized for construction in S.L. 2000-3 as part of the earlier general obligation bond program.

Section 4. Authorizes the Director of the Budget, at the request of the Board of Governors, to authorize cost increases or decreases, or changes in the method of financing for the projects authorized by the bill. The Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations, but consultation is not required.

Section 5. The UNC special obligation bond act requires that the specific projects and their costs be set forth in legislation approved by the General Assembly and that the maximum amount of special obligation bonds to be issued to finance the specific projects listed be stated. Sections 2 and 3 set forth the specific projects and their costs. This section expressly states that the maximum principal amount of special obligation bonds to be issued shall not exceed the amounts listed in Sections 2 and 3 plus $6 million for related additional costs for which bond proceeds are routinely used, such as issuance expenses, funding of reserve funds, and capitalized interest.

Section 6. The bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE
REVISED NOTE

BILL NUMBER: HB 1726 (First Edition)

SHORT TITLE: UNC Nonappropriated Capital

SPONSOR(S): Representative Allen

FISCAL IMPACT

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

	($million)				
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
EXPENDITURES					
General Fund	.05	1.1	2.3	10.9	10.2
POSITIONS*	3	22	50	167	167

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina General Administration

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

* General Fund position totals are cumulative.

BILL SUMMARY: The bill authorizes the construction and financing, without appropriations from the General Fund, of capital improvement projects of the constituent institutions of the University of North Carolina.

ASSUMPTIONS AND METHODOLOGY: The chart on the following pages was compiled with the assistance of the Associate Vice President for Finance for the UNC Office of the President. The chart shows the cost to construct and operate the proposed campus buildings and the source of funds for each facility. All projects are scheduled to begin construction in 2003 and have been approved by the Boards of Trustees of the campuses and the UNC Board of Governors. The effect of the bond debt on students is also shown.

The seven projects in Section 3 of the bill were previously authorized by the 2000 General Assembly as part of the $3.1 billion bond program in SB 912 (S.L. 2000, Chapter 3). These projects have received the following General Obligation bond funding:

	GO Bonds Authorized	HB 1726 Amount
North Carolina State University		
College of Engineering		
Phase I	$32,806,500	
Phase II	$46,565,200	$8,000,000
CVM Research Lab Building	$20,180,000	$14,584,000
Centennial Campus		
Research Lab Space Phase I	$18,900,000	$4,064,000
The University of North Carolina at Chapel Hill		
Carrington Hall Addition	$10,082,100	$2,077,900
Science Complex Phase I	$55,012,500	$18,037,500
Science Complex Phase II	$33,437,500	
The University of North Carolina at Pembroke		
Auxiliary Services Complex and Student Bookstore	$2,696,000	$1,500,000
The University of North Carolina at Wilmington		
Westside Building Expansion	$2,687,300	$3,000,000
TOTAL	$222,367,100	$51,263,400

Eight projects in the bill will require a General Fund appropriation to fund annual operating expenses. UNC-Chapel Hill's School of Medicine Research Facilities is the first to require operating money in FY 2002-03. Three more facilities require General Fund support in FY 2003-04, two more in FY 2004-05, and two more in FY 2005-06. The average operating cost for these eight buildings is $11.9 million over the next twenty years.

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operative Costs
Section 2						
Appalachian State University	Residence Halls Comprehensive Renovations	$12,000,000	Housing Receipts		$817,635	Housing Receipts
East Carolina University	Clement Resident Hall Renovations	$2,833,000	Housing Receipts			
	West End Dining Supplement	$3,357,000	Dining & Housing Receipts		$287,047	Dining & Housing Receipts
Elizabeth City State University	Renovation of Campus Dining Facility	$1,178,000	Dining Receipts		$537,868	Dining Receipts
Fayetteville State University	Athletic Facilities Improvements	$2,766,550	Athletic Receipts, Private Gifts and Debt Service Fee	$95/yr beginning Fall 2003	$238,298	General Fund
North Carolina State University	Soccer, Track, and Softball Complex	$4,500,000	Athletic Receipts		$85,677	Athletic Receipts
	Fire Safety - Residence Halls	$1,300,000	Housing Receipts		$155,399	Housing Receipts
	University Apartments for Upperclassmen Housing	$77,260,700	Housing Receipts		$2,589,558	Housing Receipts

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operative Costs
North Carolina State University (continued)	Parking Expansion Projects	$1,000,000	Parking Receipts		$15,728	Parking Receipts
UNC-Chapel Hill	208 West Franklin Street	$4,000,000	Private Gifts		$210,050	Private Gifts
	Kenan, McIver, Alderman Residence Hall Renovations	$10,500,000	Housing Receipts		$434,821	Housing Receipts
	Residence College Phase II	$46,500,000	Housing Receipts		$3,016,114	Housing Receipts
	School of Medicine Research Facilities	$77,700,000	Facilities & Administrative Receipts		$3,732,787	General Fund
	Ramshead Development	$12,800,000	Parking, Dining, Student Recreation Fee, Sales & Gift	$30-$40/yr beginning Fall 2003 (50% of fee)	$3,677,704	Parking, Dining, Student Recreation Fee, & Sales
	Hot Water Replacement Phase II	$5,000,000	Utilities Trust Fund			
UNC-Charlotte	Residence Hall Phase VIII	$22,000,000	Housing Receipts		$926,244	Housing Receipts
	Brocker Health Center	$7,150,000	Student Health Fee	$14/yr beginning Fall 2003	$219,757	Student Health Fee
	Parking Deck G	$8,300,000	Parking Receipts		$1,842	Parking Receipts

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operative Costs
UNC-Pembroke	Surface Parking Lot	$275,000	Parking Receipts			
	University Center Expansion	$3,000,000	University Center Debt Service Fee	$80/yr beginning Spring 2003	$138,159	Book Store Receipts and potential increase in Student Activity Fee
	Improvements to Student Recreation Facilities	$600,000	Student Recreation Debt Service Fee	$16/yr beginning Spring 2003	$88,714	Student Recreation Receipts
UNC-Wilmington	University Union Building Expansion and Renovation (Supplemental Funding)	$22,400,000	Dining Receipts, Bookstore Receipts, and University Union Debt Fee	$115/yr beginning Spring 2003	$549,017	Will request increase in Student Recreation Fee
	Parking - 650 Spaces	$3,000,000	Parking Receipts			
	Wagoner Hall Renovations	$4,000,000	Dining Receipts			
	Residence Hall Renovations	$6,000,000	Housing Receipts			
Western Carolina University	Hospitality Management Center	$8,000,000	Federal Grant		$246,276	General Fund
Total		**$347,420,250**			**$4,217,361**	General Fund
					$13,751,334	**Other Sources**

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operative Costs
Section 3 Previously Authorized						
North Carolina State University	College of Engineering Phase II	$8,000,000	Facilities & Administrative Receipts and Engineering Foundation funds		$1,764,997	General Fund
	College of Veterinary Medicine Research Lab Building	$14,584,000	Facilities & Administrative Receipts and Veterinary Practice Plan		$1,034,033	General Fund
	Centennial Campus Building	$4,064,000	Centennial Campus Receipts		$943,276	General Fund
UNC-Chapel Hill	Carrington Hall Addition	$2,077,900	Private Gifts		$877,879	General Fund
	Science Complex Phase I	$18,037,500	Private Gifts		$3,041,424	General Fund
UNC-Pembroke	Auxiliary Services Complex and Student Bookstore	$1,500,000	Student Services Debt Fee	$40/yr beginning Spring 2003		
UNC-Wilmington	Westside Building Expansion	$3,000,000	Student Debt Service Fee	$20/yr	$83,523	Available balance in receipts
Total		**$51,263,400**			**$7,661,609 $83,523**	**General Fund Other Sources**

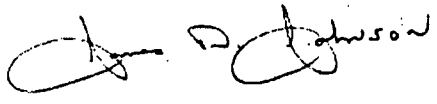
SOURCES OF DATA: Associate Vice President for Finance for the UNC Office of the President

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: July 29, 2002

Attachment 6

Comments to the NC House Finance Committee, August 28, 2002

By Christine L. Peeler
3702 O'Briant Place
Greensboro, NC 27410
336-665-6113

As President of the Piedmont Quality of Life Coalition, I represent over 30,000 people living in thousands of homes directly in the flight path of a FedEx air and truck cargo hub – people whose nights would become nightmares with 126 flight operations during the hours of Midnight to 6:00AM. I also represent thousands of citizens in the greater Piedmont Triad who are concerned about what a nighttime air and truck cargo hub will do to our quality of life:

1) Our area is borderline for being in non-attainment for Air Quality;
2) We are at the headwaters of the Cape Fear River Basin and are experiencing the fifth year of drought which has brought our water table dangerously low;
3) The Piedmont Triad Airport is situated right in the High Point and the Greensboro watershed. We know that other airports (viz., Baltimore, Cleveland, etc.) have been cited for toxic pollutant run-off into nearby waters. If that happened here, our water supply could be compromised.

But we are here to talk about tax incentives for a multi-billion dollar company, while our state's budget shortfalls are well known to you.

Members of the Finance Committee: We are being played for suckers. FedEx is not investing a cent in our community. The $300 Million dollar sorting facility is being paid for through the sale of bonds. FedEx will pay rent. The unnecessary third runway will be paid for with our federal, state, and local tax dollars. NCDOT dollars, collected from taxes we pay on gasoline, etc., will pay to move a recently built highway (Bryan Boulevard) for FedEx. Those good citizens, whose homes, health, and quality of life are in jeopardy from this project, have been abandoned by the state and county to whom they pay taxes, and ignored by commercial developers anxious to make money off the "distribution centers," a.k.a. warehouses, to be built near the airport. Good, productive citizens, who have faithfully paid their state and local taxes, are now being betrayed and asked to be sacrificial lambs for this project.

But look what may happen: In Louisville, Kentucky, where there is a UPS cargo hub, that cargo company continued to bully state officials for more tax incentives after they were already there. In other words, the tax

bite may not be over once FedEx is here. In Louisville, UPS kept threatening to pull up stakes and leave if their demands were not met. (See *Wall Street Journal* article, 4-24-98.) UPS could not get enough young college students to work the graveyard shift. (Strong young men are the preferred employees for these kinds of heavy package lifting jobs. These jobs would not be suitable, either because of job qualifications or wages, for many of our laid off textile workers, as has been suggested.) So, to appease UPS, the state of Kentucky came up with the idea of building "UPS University:" State officials voted to fund the university and pressured teachers from the local colleges to provide evening classes for college students/hub workers at this "UPS University" so the students could work the night shift. The university had special dormitories constructed so that hub workers could sleep during the day. You may have read about this in the *Time* magazine series on Corporate Welfare in November, 1998. (*Time*, 11-9-98, p. 49)

But that was not enough for UPS. They continued to threaten to leave and asked for more economic/tax incentives, including a break on the corporate income tax!

Sound familiar? Once you go down that path with these corporate robbers, at taxpayer expense, you may find yourselves going down a slippery slope. FedEx has been guaranteed by the Airport Authority that they will not have to pay for any required noise mitigation. Neither will FedEx have to pay property tax or sales tax on $70 Million worth of sorting/conveyor belt equipment in the hub. And perhaps the biggest insult to all those good companies who pay taxes on their property and equipment, and to all citizens who pay taxes on their cars and personal property, FedEx seeks to avoid paying tax on their fleet of 63 planes located at PTIA.

Assured of tax incentives from our state (and its taxpayers), FedEx turned around and offered to pay $200 Million for the right to name the Washington Redskin's stadium "FedEx Field." (*The Washington Post*, 10-28-99)

An answer exists, and that is to demand that, if FedEx wants to enjoy all that being in our state has to offer, they should locate their air and truck cargo hub in the Global TransPark at Kinston which was designed for such a purpose. We should not be paying them to rape beautiful, productive Guilford County. We should honor the intent of the Bill Lee Act, which is to encourage development in counties where the need is. The Global TransPark at Kinston is the place.

WALL ST. JOURNAL 4-24-98

6

Just in Time

When UPS Demanded Workers, Louisville Did the Delivering

Even in a Strong Economy, Kentucky Wasn't Willing To Lose a Big Employer

College for Night-Shift Staff

By Greg Jaffe
And Douglas A. Blackmon
Staff Reporters of The Wall Street Journal

LOUISVILLE, Ky. – Last fall, United Parcel Service of America Inc. was feeling squeezed. Its $6 billion air-freight business was growing rapidly and would soon outstrip capacity for the nightly avalanche of packages from around the world. Meanwhile, with record-low unemployment here, workers were scarce, and prospects for expanding operations looked bleak.

Louisville itself also was deceptively vulnerable. Despite a robust economy, UPS was the driving force in the city's growth. "Losing UPS would be an economic disaster," says J.D. Nichols, a prominent real-estate developer here.

Could UPS expand and stay, or would it leave?

The Crucial Consideration

Over the next several months, UPS and Louisville played a tense poker game, for an unusual pot. UPS didn't want just the usual tax breaks and roads – which it eventually got to the tune of $120 million to $140 million. The company, which now employs 15,000 people here, half of them at its existing air-freight hub, also wanted something even more valuable: workers. Without 6,000 additional employees, and, in particular, 3,000 to staff UPS's most-critical – and hardest-to-fill – night shift, the company couldn't expand. But Louisville seemed to have no workers to offer.

The path to the unconventional solution that UPS and Louisville hammered out was a cliffhanger of threats and counterthreats. The deal finally came together following what might have been an enormous bluff by Atlanta-based UPS – a bluff that Kentucky's Gov. Paul Patton ultimately could not bring himself to call. The saga illustrates not only how companies' demands have changed in recent years as their need for workers has increased, but also how they can milk states for incentive packages even in a full-employment econ-

Last October, UPS quietly prepared its first move. It proffered an unusual invitation to two officials from Greater Louisville Inc., the chamber of commerce, and Mr. Nichols, a major contributor to the governor, to attend a presentation at the company's airline headquarters here. At the meeting, consultants from William H. Mercer Inc. tried to answer the question posed by UPS: Could Louisville supply the workers needed to staff a new $1 billion facility the company was planning?

Their answer was a resounding no.

Message Sent and Received

Louisville officials angrily argued that the study was biased, but they knew that their protests didn't matter. "There is no doubt UPS was trying to send us a message," says Steve Higdon, who heads economic development for the chamber, "and we got it."

A decade ago, UPS had no trouble finding thousands of workers to unload, sort and reload 800,000 parcels every night here. It didn't even advertise jobs in the local newspaper. "I would yearn for those days again," says Amy Whitley, UPS's human-resources director here.

By the early 1990s, though, UPS was resorting to increasingly desperate measures to fill its night shifts. It started bus service between its hub and impoverished sections of Louisville and rural Kentucky. It paid $1,200 bonuses to employees who brought in new workers and even recruited high-school students, offering them college-level classes at the hub if they worked the late-afternoon shift.

But as UPS lured more workers, it lost them at an alarming pace; the night hours, especially, were a problem despite starting pay of $8.50 an hour. By last year, the average stay of Louisville's hub employees dropped to just nine weeks. And the percentage of student employees – whom UPS prefers for late-night jobs – had fallen below 15%.

Grim Forecast

When the Mercer consultants unfurled their study last fall, they made it clear that things weren't going to improve. They predicted that because of Louisville's 3.5% unemployment rate and stagnant population growth, UPS would struggle endlessly to find even the 7,500 workers needed at its existing hub.

But UPS didn't want to leave Louisville, where it had already invested heavily in buildings, business relationships and a trained work force. Yet it wanted to put as much pressure as it could on state and local officials to assemble an attractive incentives package, including a major commitment to help find workers.

One major bone of contention: The parcel-delivery giant had long been irritated because local universities and city officials hadn't helped hire college students. "They weren't fully educated to the value of our jobs," Ms. Whitley says.

So UPS had a calculated strategy in which it would use all its political resources, says Doug Kuelpman, its public-affairs manager in Louisville and lead negotiator on the hub.

First, UPS sought to rattle Louisville with the Mercer report. The company

Please Turn to Page A8, Column 1

Continued From First Page

invited to the Mercer meeting three business leaders: Doug Cobb, the chamber's president; his deputy, Mr. Higdon, a former UPS executive; and, most important, Mr. Nichols, who sat on the board of the airport authority and championed a $700 million airport expansion put together almost entirely at UPS's behest. "You know he's going to pick up the phone and do something," Mr. Kuelpman says.

Meanwhile, UPS sent signals to Gov. Patton's chief of staff, Andrew "Skipper" Martin, whom Mr. Kuelpman had know for years, that it was considering leaving Louisville and that it had visited other sites.

The stakes were huge on Kentucky's side of the table, too. UPS's hub was a bright spot in the state's manufacturing economy, which had been stagnant in the 1980s. The hub not only created jobs but also served as a magnet for a new logistics industry. In the past two years, seven computer-assembly and -repair companies, which need to ship and receive parts quickly, clustered around the hub. Without UPS, they would probably leave. So would the pharmaceutical industry.

Growing Concern

Following the consultants' presentation, concern over UPS grew quickly. The company was rumored to be looking at sites in Nashville, Tenn.; Philadelphia; and Columbus, Ohio. City and state officials misinterpreted a letter from UPS that said the company didn't support extensions of Louisville's runways.

"That letter was extremely shocking," says Mr. Nichols, who says local UPS operations officials had assured him that runway extensions were essential if the company were to expand its hub here.

UPS, in fact, never wanted the runway extensions. Although UPS's Mr. Kuelpman says he never desired any misunderstanding, the confusion was never cleared up. And some in Kentucky still view the letter as a sign of a threat.

In early November, at a $1,000-a-plate fund-raiser for Gov. Patton in Mr. Nichols' home, Mr. Nichols cornered the governor with the news that UPS might leave, rumors that it had looked at other sites and the foreboding letter. As UPS's Mr. Kuelpman looked on, Mr. Nichols asked Gov. Patton: "You wouldn't want UPS to decide to leave Kentucky, would you?"

The governor quickly ordered his staff to devise a plan that would appease UPS.

In Louisville, Mr. Higdon and Mr. Cobb, the chamber of commerce president, were scratching out a possible strategy. Talking to Mr. Kuelpman following a chamber meeting, Mr. Cobb hit upon what seemed to be a bizarre idea – one that nonetheless would become the cornerstone of Kentucky's efforts. He suggested that the company build its own university. "He kind of smiled at that idea," Mr. Cobb recalls. "It seemed beyond realistic."

But nothing was out of bounds. Working with Mr. Nichols, the developer, the chamber drew up a preliminary plan for what it called in early drafts "UPS University."

For years, UPS had difficulty keeping college students working on the 11:30-p.m.-to-3:30-a.m. shift because they couldn't wake up in time for morning classes at the University of Louisville. At the proposed university, students would live in specially built dormitories that would help them sleep during the day. In the evening, they would attend classes taught by professors from the University of Louisville, a local community college and a state technical school. After classes, they would work the UPS graveyard shift.

UPS liked the idea, and so did the governor. He called the three Louisville institutions' presidents to a meeting with Mr. Kuelpman.

"The governor looked at us," recalls John Shumaker, the University of Louisville's president. "He said, 'UPS will have the workers they need, won't they?' "

The schools – and shortly thereafter, the Legislature – signed on to the plan, which will cost Kentucky about $15 million over the next decade. UPS had won one big hand, and it decided it could stay in Louisville. But it wanted more.

In mid-January, UPS presented Kentucky officials with a binder that outlined what it would take to keep the company here. The 3-inch-thick volume asked for an incentive package totaling $300 million that included funding for the overnight university, a reduction in the state's jet-fuel tax (which the Legislature approved last week) and a $100 million cash grant, knowledgeable people say.

"Solving the employment issue gets [Louisville] on the long list" of potential expansion sites, John Hindman, a UPS executive, told state officials when the company unveiled its proposal. "Economic-development incentives get you on the short list."

Gov. Patton countered with a $100 million package that included foreign-trade-zone and enterprise-zone tax breaks.

Shifting Demands

On Feb. 19, the two sides squeezed into a small conference room a few feet from the governor's office in Frankfort to hammer out a deal. UPS quickly dropped its demand for the $100 million grant. But in its place, it asked for access to incentives available through a program called the Kentucky Jobs Development Act, which offers tax breaks on corporate income taxes. State officials balked.

For three days, negotiators wrangled over the package. State officials argued that giving back more tax revenue would cut into money that counties needed to handle the growth the new hub would create. They also contended that the city and state had already invested $700 million in upgrading the airport. "We couldn't give much more and make the deal worthwhile," Mr. Higdon says.

On Feb. 20, the two sides met for 12 hours of talks. At the end, the UPS team walked away from the table. No deal.

The day got even worse for the Kentucky team. Gov. Patton's advisers decided to have him phone Thomas H. Weidemeyer, the executive running the airline operations from Atlanta. But before he could place the call, UPS's Mr. Hindman phoned from Louisville. The message: UPS was going to start taking bids from all comers for the hub unless Kentucky officials could come up with a richer deal.

Some state officials urged Gov. Patton to hold firm, saying the costs of changing cities would be too high for UPS. "There was no doubt in my mind they were bluffing," says one member of the Kentucky team. "There was no way they could accommodate their next-day air service [growth] unless they started construction by July."

Governor's Last Pitch

But Gov. Patton and his team had to make a quick decision. The governor decided to make one last pitch. He called UPS's Mr. Kuelpman and offered a five-minute presentation on why he thought the deal Kentucky was offering was fair to both sides. Waiting for Mr. Kuelpman's response, with his aides gathered silently nearby, the governor heard only silence. "Doug, are you there?" he asked.

A capitol secretary broke in, saying she had Mr. Kuelpman on the line. The original phone connection had been lost.

Gov. Patton repeated his spiel. But this time, when Mr. Kuelpman said the state's offer wasn't enough, the governor caved in. If all that was separating the two sides was the disagreement over the Kentucky Jobs Development money, he said, the state would open up those funds to UPS, say people knowledgeable about the negotiations. After a short pause, Mr. Kuelpman said: "We're closer than you think."

The two sides broke for the weekend. On the following Monday, Kentucky officials agreed to surrender an additional $35 million in tax breaks on corporate income taxes to seal the deal. UPS agreed to continue paying a portion of what would have been covered by the foreign-trade-zone tax breaks.

The day's events brought home a powerful lesson: Even in a strong economy, large companies often hold most of the cards.

"The reality was that we couldn't afford to lose this project," Louisville's Mr. Higdon says. "I don't like the incentives game. I wish we didn't have to give them. But we couldn't afford to lose the state's largest employer."

er Air-Bag Fray ecting System

Ford disclosed yesterday that the company will announce today a new system of ...ttach child-safety seats to vehicle ...ore securely. Ford said it will roduce the system by August or Septem- as a standard feature on Focus cars d Windstar minivans sold in the U.S. d Canada, and then expand it to its other odels.

Ford spokesman Terry Bresnihan uldn't say whether Ford's decision to ake its safety-seat announcement today s triggered by word of GM's air-bag ove. But, he said, "this is a very competve business in every aspect."

The federal government is expected soon issue requirements for systems to fasten ild-safety seats to vehicle seats. GM, hich already offers straps to secure safety ats, will announce a new metal bracket- system of its own after those requirents are issued, company officials said.

GM won't be the first to offer so-called mart air bags that automatically shut off hen a child-safety seat has been placed the front passenger seat. Mercedes-enz cars and its M Class vehicles come andard with such a system, which, like M's, turns off the front air bag but leaves e side bag activated. But the system Mercedes, a unit of DaimlerChrysler G, works only with safety seats that feare a special electronic tag detectable by e vehicle. Those seats are sold by the uto maker itself.

GM says its system will be able to sense l types of child-safety seats that the comany is aware of. An onboard computer, sing the sensors in the seat's hidden eleconic mat, will detect the pattern of pressure from above. The computer will decide hether the pressure seems to be coming om a child-safety seat or a person—and hen decide whether to shut off the air bag.

The pressure sensors will kick in when he air-bag system's weighing device determines that the occupant weighs between 66 pounds and 110 pounds. If the occupant weighs less than 66 pounds, the system assumes it is a child, and shuts off the air bag. If the occupant weighs more than 110 pounds, the system figures it is an adult, and keeps the air bag activated.

Bob Lange, GM's director of safety engineering, said GM's decision to publicize the technology reflects a realization by the company's top executives "that this is an area of competitive advantage. We think we do it better than anyone else, and we ought to start telling people about it."

In another competitive jab, GM officials said Mr. Zarella also will disclose today the results of an internal study that GM says shows its side air bags are less likely to injure small children than are some of its competitors' side air bags.

GM won't name the competitors whose bags it says are less effective. Ford offers side air bags on several of its models. Chrysler vehicles aren't available with side air bags or front-air-bag weight-detection devices. A DaimlerChrysler spokeswoman says the company is researching those technologies, but hasn't decided when it will add them to its lineup.

The National Highway Traffic Safety Administration is looking at the operation of side air bags.

Development-Deal Jobs Often Pay Below Average, Study Finds

By Rekha Balu
Staff Reporter of The Wall Street Journal

Local governments often give sweet deals to rich corporations to open a factory and create jobs in the name of economic development. But a study released yesterday shows that in Minnesota many of those subsidized jobs pay wages far below market rates.

The study by the Institute on Taxation and Economic Policy, a research arm of Washington-based Citizens for Tax Justice, analyzed about 525 deals in 1997 totaling nearly $176 million in loans, grants and tax-increment financing by cities and state agencies in Minnesota.

The report concluded that two-thirds of the deals were approved despite wages projected at 20% or more below local market levels for their industries. Statewide, about half actually paid wages that low. In the Twin Cities metropolitan area, three-fourths of the deals projected below-average wages.

Minnesota's Department of Trade and Economic Development contends that, had the study compared wages of subsidized and nonsubsidized workers at the same skill level, it would have found little difference in wages. The agency said that high-paying, tenured jobs skew the average.

The study found that half the subsidized wages pay less than $10 an hour; statewide, 31% of jobs pay less than that, the report states. And more than half of the job-takers are older than 30 years old, hardly entry level. About 65% of the subsidized jobs paid too little to keep a family from qualifying for Medicaid, and 25% for food stamps.

The study also said that incentives that don't mandate a floor for wages can promote bidding wars between cities, which it called a "zero-sum game."

A bidding war is "counterproductive," said Art Rolnick, director of research at the Federal Reserve Bank of Minneapolis, which decried incentives in a 1995 report. "It just moves jobs."

Considering that Minnesota governments agreed to pay subsidies equaling $100,000 or more per job in 38 cases, some critics, including the liberal Institute on Taxation and Economic Policy, question whether financial incentives provide a clear economic benefit.

For their part, cities and counties say the purpose of incentives and financial assistance isn't always job creation. More often, it is redeveloping abandoned land, cleaning up environmental disasters or historic preservation.

For example, about two years ago, Philip Morris Cos.' Kraft Foods Inc. wanted to expand its facility in New Ulm, Minn., and create an access road on the very site where the city wanted to build a public street. So the city set up a $330,000 tax-increment financing district, which routes the tax payment on the increased property value back to the district. One of the city's conditions: Kraft must create one new job, but with no wage requirements.

Kraft proposed one job at $8.99 an hour. That job actually paid $12.08 an hour—and 22 other jobs were elevated to higher wage levels because of the expansion.

But study co-author Greg LeRoy says without a correlation between wages and subsidies, taxpayers can't weigh the benefits against the costs.

"How can you justify expensive payments for mediocre jobs?" he asks, "especially in an era of low unemployment."

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High Tech Issues Of The Week

Wall Street Journal
2-11-99

Triad, FedEx are not a good match

Hub would destroy quality of life, endanger safety of 12,000 residents

By Mark S. Miller
GUEST COLUMNIST

My View

I want to thank the *Journal* for allowing me to respond to the Aug. 21 editorial on the Federal Express hub, "Residents misdirect anger." In the editorial my three-minute talk at the Federal Aviation Administration hearing was characterized as having "raised some legitimate concerns but did so with so much passion and hyperbole that those concerns lost much of their appeal to impartial observers."

As a biomedical research scientist who has spent his career studying the effects of environmental agents on human health, I will not apologize for being passionate about a subject that concerns me greatly. The stakes involved — the environmental soundness of my community, especially given the unfettered development in the name of progress in many Piedmont communities — are too important to be left solely to the business community and to the media.

The business community and the media elite, [illegible]ding the *Journal*, are once again out of [illegible] as to what the citizens truly want. As for [illegible] the *Journal* calls hyperbole, that was my attempt to humanize the impact this proposed cargo hub will have on a very large area of west Guilford County. If that embarrasses you or makes you uncomfortable, good! Because the human impact is something that has been glossed over by the business and political interests.

BUILDING THE FEDERAL EXPRESS cargo hub will destroy the quality of life of neighbors and endanger the health and safety of the more than 3,000 homes within a 3-mile radius of Piedmont Triad International Airport — 12,000 men, women and children. It will devastate the social fabric of this entire community to fulfill the expansionist dreams of the airport authority and make the wealthiest members of our community a little more wealthy.

I reject the *Journal*'s editorial stance that the close proximity of residential developments to the proposed new runway is all the fault of real-estate developers — our local government provided the zoning ordinances and the water and sewer lines to make residential development possible. Indeed, the local government was too short-sighted to hold the land for later airport expansion. It wanted as much money as it could get from real estate taxes and the businesses that support this community. Well, we are here with our local government's blessing, and it is [illegible]late to turn the clock back.

[illegible]ave seen the Web site of the expansion's [illegible]ractor, Greiner, extolling its construction of the FedEx cargo facility in Memphis and other cities. I also have used the Internet to obtain documentation that cites complaints of flawed, biased studies that favored airport expansion plans at the expense of their communities in places such as Indianapolis and Memphis that have FedEx air cargo hubs.

I DO NOT BELIEVE that the citizens of this community want to be the victims of another bogus study that averages airport noise over a 24-hour period. When Greiner and the FAA analyze the noise effects of this cargo hub, they should do so during the peak hours when the planes will be operating.

Telling small children who are awakened at night crying in their beds because they can't sleep and are frightened by the constant roar of overhead jet engines that the noise is not so bad if you average it out over a 24-hour period won't get them to sleep at 3 in the morning. Nor will it help when their school grades suffer, and their parents can't focus on their work the next day because they haven't had a good night's sleep in five days, five weeks, five months, five years.

Biomedical literature from just the last eight years cites more than 100 papers documenting the adverse effects that this type of noise has on human health, especially in children. Greiner and the FAA need to carefully consider this before making their decision — the theoretical economic benefits do not outweigh the costs to human health and welfare.

I am concerned about the level of air pollution that will be introduced in a county that has one of the worst air quality levels in North Carolina. We already have too many ozone alerts during the course of the year. Will we eventually reach a point where the youngest and oldest members of our community have to stay indoors all summer because the air quality is so bad?

I have concerns about safety. Sixty to 100 planes going in and out of the airport every night, six days a week are an accident waiting to happen. FedEx has had its share of accidents, which often occur within three miles of an airport. In this case, any accident that would occur would be in a heavily populated residential community, assuring the loss of life.

I am concerned about the increase in truck traffic on roads that are already heavily traveled and crowded, with the accompanying problems of noise and increased accidents. I am concerned about the location of a sorting facility less than a mile from a densely populated region, creating noise and excess light in the late evening and early morning hours. I am concerned about the effects on our natural resources — the destruction of the line of trees that create a natural sound barrier, and the increased use of our already overburdened water and sewage systems.

This is an inappropriate industry for this area given the proximity of the airport to western Greensboro, northern High Point, and the eastern and southern parts of Colfax. The community has not had any input into this decision, and when we had the chance to vote on a cargo hub several years ago we voted against it. No sane, rational person doing an unbiased, objective, independent study could find this project environmentally sound.

I AM NOT AN ENEMY to progress or economic development. The best investment that could be made is an investment in our children's education. If our state and local governments would take the incentive money that they are offering to FedEx and invest it instead in our schools and in the education of our young people, we could build a far more valuable resource than an air cargo hub — an educated, talented work force that would attract companies that need talent and offer careers, not night-time, shift work in warehouses.

The Triad's true asset is our geographic location and network of highways, not the airport. We will attract these types of businesses, which will offer jobs that will be a boon to our economy and allow us to preserve the quality of life that is dear to so many of us in the Piedmont, only if we can provide the proper infrastructure to support them — brainpower.

■ *Miller is an associate professor of cancer biology at Wake Forest University School of Medicine who lives in Greensboro.*

Guest Columns

The *Journal* welcomes guest-column submissions. Length should be about 700 words. As a rule, guest columnists should have some special authority or qualifications for writing about their subject, but exceptions will be made for particularly moving, telling or funny personal stories. The preferred method of receiving such submissions is by e-mail. Our address is:

Letters@w-s-journal.com. Fax and regular mail are also accepted. The fax number is (336) 727-7402. Our mail address is: Letters to the *Journal*, P.O. Box 3159, Winston-Salem, N.C. 27102.

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TIME

WHAT CORPORATE WELFARE COSTS YOU

A special investigation by Donald L. Barlett and James B. Steele

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SPECIAL REPORT | FIRST IN A SERIES

CORPORATE WELFARE

A TIME investigation uncovers how hundreds of companies get on the dole—and why it costs every working American the equivalent of two weeks' pay every year

By Donald L. Barlett and James B. Steele

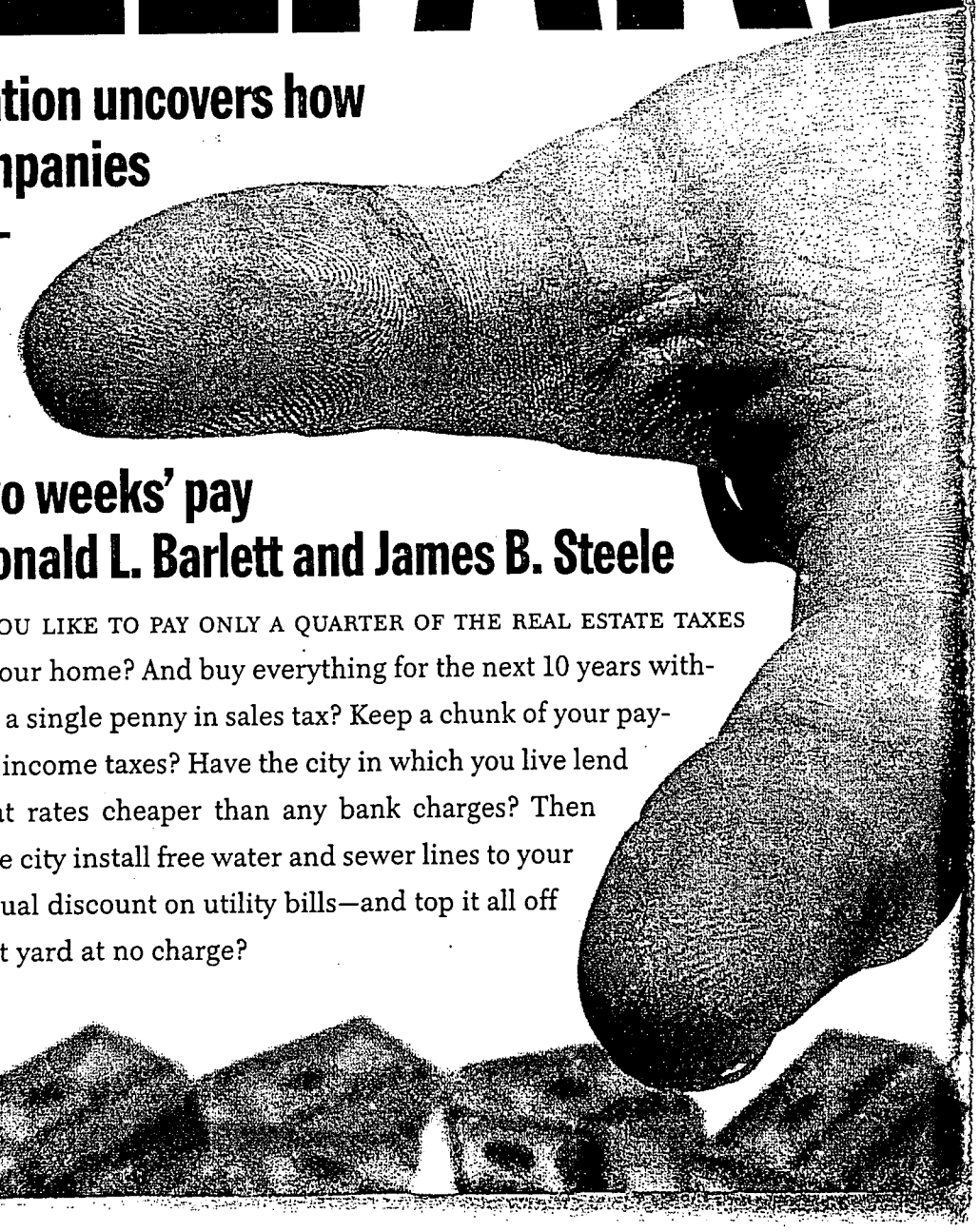
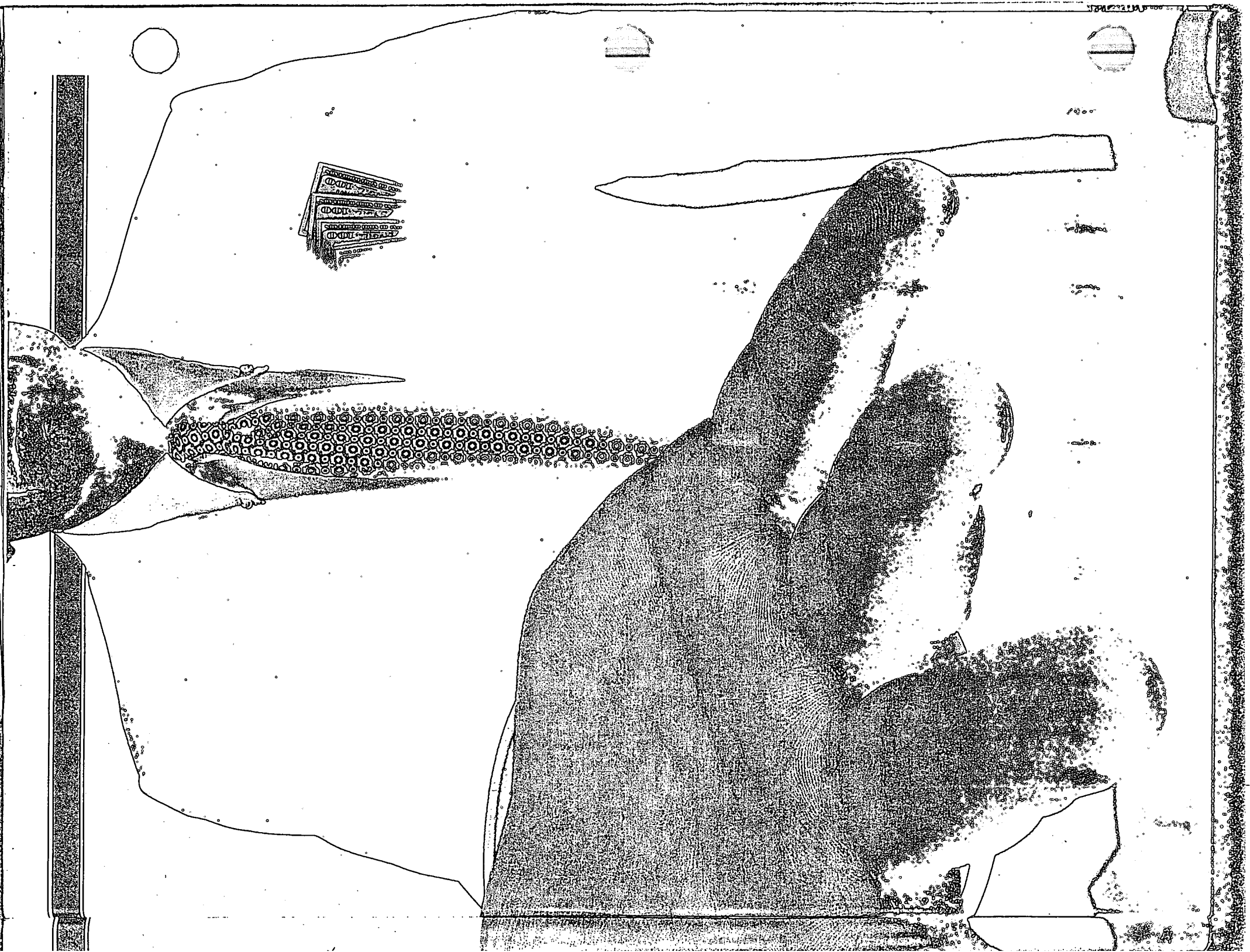


PHOTO-ILLUSTRATION BY JOE ZEFF

HOW WOULD YOU LIKE TO PAY ONLY A QUARTER OF THE REAL ESTATE TAXES you owe on your home? And buy everything for the next 10 years without spending a single penny in sales tax? Keep a chunk of your paycheck free of income taxes? Have the city in which you live lend you money at rates cheaper than any bank charges? Then have the same city install free water and sewer lines to your house, offer you a perpetual discount on utility bills—and top it all off by landscaping your front yard at no charge?



Fat chance. You can't get any of that, of course. But if you live almost anywhere in America, all around you are taxpayers getting deals like this. These taxpayers are called corporations, and their deals are usually trumpeted as "economic development" or "public-private partnerships." But a better name is corporate welfare. It's a game in which governments large and small subsidize corporations large and small, usually at the expense of another state or town and almost always at the expense of individual and other corporate taxpayers.

Two years after Congress reduced welfare for individuals and families, this other kind of welfare continues to expand, penetrating every corner of the American economy. It has turned politicians into bribery specialists, and smart business people into con artists. And most surprising of all, it has rarely created any new jobs.

While corporate welfare has attracted critics from both the left and the right, there is no uniform definition. By TIME's definition, it is this: any action by local, state or federal government that gives a corporation or an entire industry a benefit not offered to others. It can be an outright subsidy, a grant, real estate, a low-interest loan or a government service. It can also be a tax break—a credit, exemption, deferral or deduction, or a tax rate lower than the one others pay.

During one of the most robust economic periods in o out $125 billion in corporate welfare, equivalent to all th

The rationale to curtail traditional welfare programs, such as Aid to Families with Dependent Children and food stamps, and to impose a lifetime limit on the amount of aid received, was compelling: the old system didn't work. It was unfair, destroyed incentive, perpetuated dependence and distorted the economy. An 18-month TIME investigation has found that the same indictment, almost to the word, applies to corporate welfare. In some ways, it represents pork-barrel legislation of the worst order. The difference, of course, is that instead of rewarding the poor, it rewards the powerful.

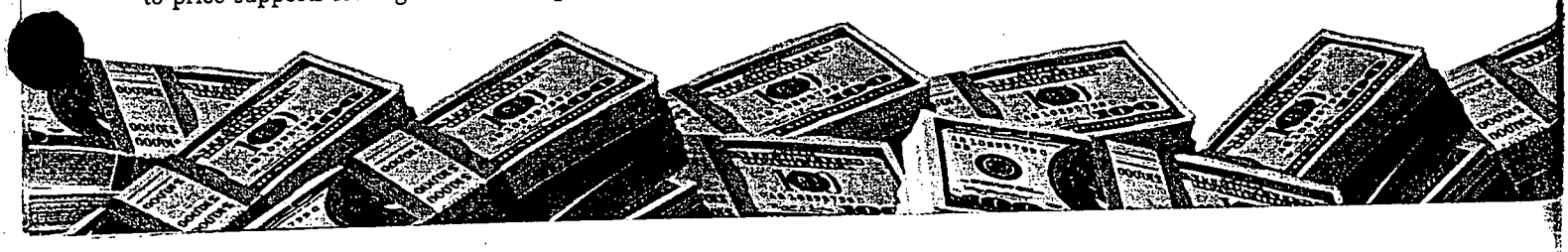
And it rewards them handsomely. The Federal Government alone shells out $125 billion a year in corporate welfare, this in the midst of one of the more robust economic periods in the nation's history. Indeed, thus far in the 1990s, corporate profits have totaled $4.5 trillion—a sum equal to the cumulative paychecks of 50 million working Americans who earned less than $25,000 a year, for those eight years.

That makes the Federal Government America's biggest sugar daddy, dispensing a range of giveaways from tax abatements to price supports for sugar itself. Companies get government money to advertise their products; to help build new plants, offices and stores; and to train their workers. They sell their goods to foreign buyers that make the acquisitions with tax dollars supplied by the U.S. government; engage in foreign transactions that are insured by the government; and are excused from paying a portion of their income tax if they sell products overseas. They pocket lucrative government contracts to carry out ordinary business operations, and government grants to conduct research that will improve their profit margins. They are extended partial tax immunity if they locate in certain geographical areas, and they may write off as business expenses some of the perks enjoyed by their top executives.

The justification for much of this welfare is that the U.S. government is creating jobs. Over the past six years, Congress appropriated $5 billion to run the Export-Import Bank of the United States, which subsidizes companies that sell goods abroad. James A. Harmon, president and chairman, puts it this way: "American workers ... have higher-quality, better-paying jobs, thanks to Eximbank's financing." But the numbers at the bank's five biggest beneficiaries—AT&T, Bechtel, Boeing, General Electric and McDonnell Douglas (now a part of Boeing)—tell another story. At these companies, which have accounted for about 40% of all loans, grants and long-term guarantees in this decade, overall employment has fallen 38%, as more than a third of a million jobs have disappeared.

The picture is much the same at the state and local level, where a different kind of feeding frenzy is taking place. Politicians stumble over one another in the rush to arrange special deals for select corporations, fueling a growing economic war among the states. The result is that states keep throwing money at companies that in many cases are not serious about moving anyway. The companies are certainly not reluctant to take the money, though, which is available if they simply utter the word relocation. And why not? Corporate executives, after all, have a fiduciary duty to squeeze every dollar they can from every locality waving blandishments in their face.

State and local governments now give corporations money to move from one city to another—even from one building to another—and tax credits for hiring new employees. They supply funds to train workers or pay part of their wages while they are in training, and provide scientific and engineering assistance to solve workplace technical problems. They repave existing roads



and build new ones. They lend money at bargain-basement interest rates to erect plants or buy equipment. They excuse corporations from paying sales and property taxes and relieve them from taxes on investment income.

There are no reasonably accurate estimates on the amount of money states shovel out. That's because few want you to know. Some say they maintain no records. Some say they don't know where the files are. Some say the information is not public. All that's certain is that the figure is in the many billions of dollars each year—and it is growing, when measured against the subsidy per job.

In 1989 Illinois gave $240 million in economic incentives to Sears, Roebuck & Co. to keep its corporate headquarters and 5,400 workers in the state by moving from Chicago to suburban Hoffman Estates. That amounted to a subsidy of $44,000 for each job.

In 1991 Indiana gave $451 million in economic incentives to United Airlines to build an aircraft-maintenance facility that would employ as many as 6,300 people. Subsidy: $72,000 for each job.

In 1993 Alabama gave $253 million in economic incentives to Mercedes-Benz to build an automobile-assembly plant near Tuscaloosa and employ 1,500 workers. Subsidy: $169,000 for each job.

And in 1997 Pennsylvania gave $307 million in economic incentives to Kvaerner ASA, a Norwegian global engineering and construction company, to open a shipyard at the former Philadelphia Naval Shipyard and employ 950 people. Subsidy: $323,000 for each job.

This kind of arithmetic seldom adds up. Let's say the Philadelphia job pays $50,000. And each new worker pays $6,700 in local and state taxes. That means it will take nearly a half-century of tax collections from each individual to earn back the money granted to create his or her job. And that assumes all 950 workers will be recruited from outside Philadelphia and will relocate in the city, rather than move from existing jobs within the city, where they are already paying taxes.

All this is in service of a system that may produce jobs in one city or state, thus fostering the illusion of an uptick in employment. But it does not create more jobs in the nation as a whole. Market forces do that, and that's why 10 million jobs have been created since 1990. But most of those jobs have been created by small- and medium-size companies, from high-tech start-ups to franchised cleaning services. FORTUNE 500 companies, on the other hand, have erased more jobs than they have created this past decade, and yet they are the biggest beneficiaries of corporate welfare.

To be sure, some economic incentives are handed out for a seemingly worthwhile public purpose. The tax breaks that companies receive to locate in inner cities come to mind. Without them, companies might not invest in those neighborhoods. However well intended, these subsidies rarely produce lasting results. They may provide short-term jobs but not long-term employment. And in the end, the costs outweigh any benefits.

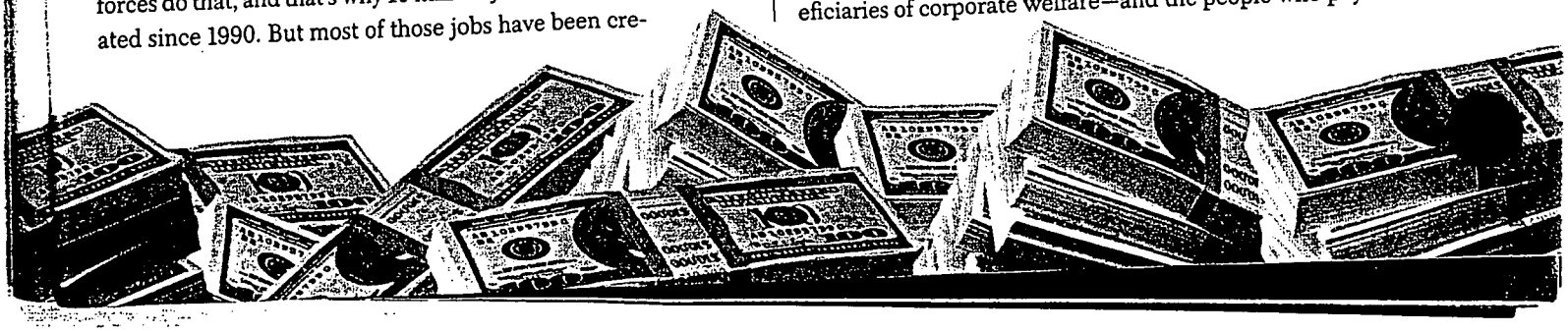
And what are those costs? The equivalent of nearly two weekly paychecks from every working man and woman in America—extra money that would stay in their pockets if it didn't go to support some business venture or another.

If corporate welfare is an unproductive end game, why does it keep growing in a period of intensive government cost cutting? For starters, it has good p.r. and an army of bureaucrats working to expand it. A corporate-welfare bureaucracy of an estimated 11,000 organizations and agencies has grown up, with access to city halls, statehouses, the Capitol and the White House. They conduct seminars, conferences and training sessions. They have their own trade associations. They publish their own journals and newsletters. They create attractive websites on the Internet. And they never call it "welfare." They call it "economic incentives" or "empowerment zones" or "enterprise zones."

Whatever the name, the result is the same. Some companies receive public services at reduced rates, while all others pay the full cost. Some companies are excused from paying all or a portion of their taxes due, while all others must pay the full amount imposed by law. Some companies receive grants, low-interest loans and other subsidies, while all others must fend for themselves.

In the end, that's corporate welfare's greatest flaw. It's unfair. One role of government is to help ensure a level playing field for people and businesses. Corporate welfare does just the opposite. It tilts the playing field in favor of the largest or the most politically influential or most aggressive businesses. In the next story, and those that follow in the coming weeks, you will meet the beneficiaries of corporate welfare—and the people who pay for it. ■

ur nation's history, the Federal Government has shelled
e income tax paid by 60 million individuals and families



STATES AT WAR

Shrewd companies are increasingly pitting politicians against one another in a quest for bigger and better tax breaks. Yet rarely do these subsidies create jobs, and the incentives sometimes rob government coffers of funds that could be used to improve services for you and your neighbors

STEVE LISS FOR TIME

ARKANSAS

Ever Try to Drink a Potato Chip?

THE WATER IN EVANSVILLE, ARK., STINKS—literally.

The town sits smack atop a geological formation where sulfur, natural gas and other petroleum products mingle with the groundwater. The result is a nasty mix that is unusable to residents. Many of the town's wells are also contaminated with potentially deadly *E. coli* pollutants. So a commodity most Americans take for granted simply does not exist in Evansville. "My five-year-old daughter doesn't know what it's like to get water out of a faucet," says resident Helen Martin. For the past five years, 200 families in this hamlet in the northwestern part of the state have sought $750,000 from the Arkansas Economic Development Commission for a new water system. Sorry, comes the reply, there is no money in the budget.

City water in Jonesboro, Ark., doesn't stink. In fact, even wastewater flowing out of the big, new Frito-Lay plant there runs through an expanded treatment facility in order to minimize environmental problems. That expansion was part of a multimillion-dollar incentive package the AEDC gave Frito-Lay to lure the company to Jonesboro. Frito-Lay is not exactly needy. It is a profitable subsidiary of PepsiCo Inc., the giant soft-drink and snack-food company that had sales of $20.9 billion in 1997.

Evansville is one of the minor casualties in the war among the states over jobs. Money is lavished on would-be employers even at the expense of some citizens' basic needs. But in the minds of state politicians and economic developers, this is a small price to pay. From a purely economic point of view, they are dead wrong. But economics and politics are seldom a rational mix.

Jonesboro got its plant after the community and state agreed to enlarge the sewage-treatment facility and provide an array of other economic incentives. Exactly how much aid was pumped into Frito-Lay to build the plant is not easy to find out. A Frito-Lay representative said the information was "proprietary." An AEDC representative, Michaela Johnson, was equally secretive, saying, "That whole project's confidential. We can't divulge that."

TIME can. Based on reports published when Jonesboro was recruiting Frito-Lay, and on more recent information obtained from other sources, TIME estimates the value of the Frito-Lay aid package at more than $10 million. And that is in addition to $104.7 million in industrial-development revenue bonds issued by the city of Jonesboro to build and equip the potato-chip plant. The other incentives include the 140-acre plant site, a rail spur, road im-

Corporate welfare has proliferated over a decade. From 1986 to 19

Quinta Martin and other children in Evansville, Ark., can't drink the toxic water

provements, a construction grant, tax credits for new employees and a 20% discount on sewer bills for the next 15 years. That sewage-treatment plant, by the way, cost $7 million and is large enough to accommodate a second city the size of Jonesboro (pop. 50,000). So for each of the 165 workers at the plant, the government has invested $61,000—which is a lot of chips.

Lynn Markley, a spokeswoman for Frito-Lay, says the company selects the general region where it wants to locate a new plant. It then prepares a sort of shopping list of requirements for the facility and contacts states about incentives.

"When we need to ... build a plant, say, in Jonesboro, [we] look at a 150-mile radius to the center of the market," says Markley. "We knew we needed a plant in the Tennessee-Arkansas-Missouri area. So with very detailed information, we contacted those states and gave them very specific details on what we needed ... [And] based on that, the states compete."

Meanwhile, in Evansville the campaign for clean water goes on, and the citizens cope as best they can. Says Janie Watkins, who along with her husband runs the town's only grocery store: "If we take a bath, we don't wash clothes. If we wash clothes, you can't take a bath. Most people get a bath every day. We can't ... You get [a bath] every two days or three days, you're lucky."

Christina Seward, mother of three small children, says her boys love to drink water. "But I don't have to tell them not to drink this water," she says. "The taste, the dirt—you wouldn't want to drink it. You put water in a glass, and you can see the dirt set-

the number of states offering tax incentives for jobs rose from 31 to 44

tle to the bottom. We don't know what's in it—we just know it's not safe."

Indeed, the Sewards' well was tested by the Arkansas Department of Health in 1996 and found to be contaminated with particles of fecal matter "too numerous to count." The Sewards use well water only to wash clothes, but not light-colored articles. The water turns "white things yellow," says Seward.

In order to drink, cook, bathe and wash, residents haul bottled water from nearby towns or load up on barrels from natural springs in the hills above Evansville. Since their campaign for water began, residents have appealed repeatedly to the state to provide a share of the $1.5 million project. "We've done everything they wanted us to do," says Kaye Trentham, who operates K.T.'s Café. "But we still don't have water."

The Evansvilles of America are growing in number as the job wars intensify. Since the 1980s, states have added one economic-incentive program after another to retain existing corporations and lure new ones. Even states that once refused to compete are reversing course. North Carolina, which had long shunned big-ticket deals, abruptly shifted gears last summer and enacted the Economic Opportunity Act of 1998. The first two beneficiaries:

- Federal Express, the global delivery service with headquarters in Memphis, Tenn., that had 1997 revenues of $11.5 billion, will receive $115 million in state tax concessions and other economic benefits to build a hub at Greensboro, N.C.
- Nucor, a company based in Charlotte, N.C., that operates steel mills in half a dozen states and had 1997 revenues of $4.2 billion, will receive $155 million in state economic assistance to build a mini-steel mill in Hertford County in the northeastern corner of the state.

Why has North Carolina joined in the great scramble to give away incentives? The same reason all the other combatants are in it: jobs. Or at least job announcements. As John Hood, president of the John Locke Foundation (a Raleigh, N.C., public policy institute that advocates individual liberty, a free-market economy and limited government), put it, "Creating jobs is not the goal of these [economic-incentive] programs. The goal of these programs is to create job announcements."

And create them they do.

Said David N. Dinkins (then mayor of New York City) in October 1993, on $31 million in incentives awarded to Kidder, Peabody Group Inc.: "The decision by Kidder, Peabody demonstrates in dramatic fashion that our job-retention strategies are working."

Said Jim Rout, mayor of Tennessee's Shelby County (where Memphis is located), in July 1995, on more than $20 million in incentives given to Birmingham Steel Corp.: "These are not expenses—they're investments. These kinds of investments will pay off... It represents skilled, well-paying jobs."

Said Frank O'Bannon, Governor of Indiana, in March 1997, on a $1.7 million tax abatement to Crown Equipment Corp. for a plant in Greencastle, Ind.: "With at least 200 good-paying new jobs, this expansion will be an important addition not only to Putnam County's economy but to all of west-central Indiana."

Said Christine Todd Whitman, Governor of New Jersey, in May 1997, on millions of dollars passed around to four large businesses under the state's new Business Employment Incentive Program: "This is what the BEIP was meant to do, create jobs and increase opportunities for New Jersey families ... This is ... a red-letter day for jobs [in New Jersey]."

Don't believe it.

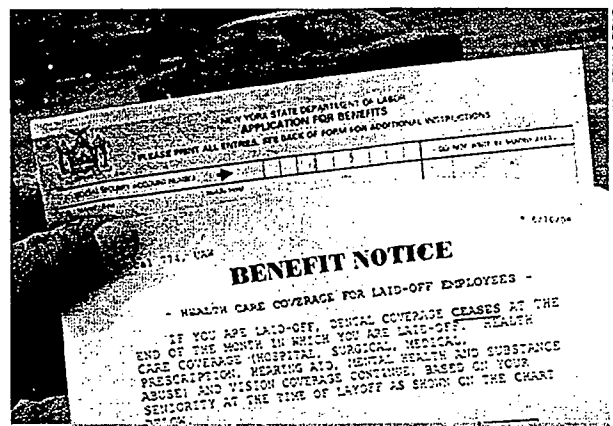
Jobs are created, of course, by the American economy—not by this process.

TIME's investigation has established that almost without exception, local and state politicians have doled out tens of billions of taxpayer dollars to businesses that are in fact eliminating rather than creating jobs. Some of the money has gone to prop up individual companies and avoid the consolidation within industries that an unfettered market would bring about. Some has been pumped into profitable companies, making them more profitable. Some has been awarded to companies that have threatened to move if they don't get it. Some has been diverted to businesses that local politicians have somehow divined will be more successful than their competitors. And last, some has gone to entire industries that are shrinking.

Witness a $300,000 grant to Anchor Glass Container Corp. last year, described by Pennsylvania Governor Tom Ridge's administration as part of an effort "to retain 275 existing jobs" at the firm's Connellsville, Pa., plant.

Retain 275 jobs?

A decade earlier, in 1987, Anchor Glass employed 9,900 people nationwide—about 1,000 of them in Pennsylvania. By the time the company began seeking economic incentives, more than half the work force had vanished as employment plunged to 4,500. Two plants were closed in Pennsylvania. And just a few months earlier, the Connellsville plant had completed another



BILL SIKES—AP

LAID OFF AT GENERAL MOTORS

New York State officials leaped at the chance to help GM retool an existing plant in Tonawanda in 1996 to build new engines and generate jobs. Net effect: fewer jobs now than then

WHAT WAS PAID OUT

$16.9 million in tax exemptions, training grants, reduced borrowing charges and lower power costs from the state

$3 million in property- and sales-tax reductions from local governments

HOW IT PAID OFF

Lost jobs. The Tonawanda plant employed 3,800 workers in 1996. A GM spokesman said the work force today is about 3,600. State and local governments thus provided $99,000 in incentives for each job GM has eliminated

ICONS BY BOB HAMBLY

Corporate welfare creates far more job announcements than jobs

round of layoffs, bringing the total for the year to 200. The company was telling the state all it needed to know about what kind of future it saw in Connellsville.

Cities go to extremes to keep jobs in the manufacturing sector, partially because they pay more than most service jobs. Here is how Edward G. Rendell, mayor of Philadelphia, explained why last year $307 million in local and state economic incentives in addition to $119 million in federal aid was being given to Kvaerner ASA, Europe's largest shipbuilder: "Those are good, honest jobs that pay a living wage and significant benefits. Jobs you can build a family on."

True enough. But Rendell cannot reverse the tide of economic forces. And no industry is a better example of the futility of subsidies than American shipbuilding. It has not been a vital U.S. business for decades. Yet surplus shipyards continue to be kept alive by subsidies from local and state governments, the Federal Government and sometimes all three. Without this aid, consolidation would have occurred long ago—as it has in virtually every other field, from defense to banking. Avondale Industries in New Orleans, for example, first went on the corporate-welfare rolls in the 1930s, when the state waived payment of personal property taxes. It's still on the dole today. Over the past decade, Avondale has been excused from paying $8 million in property taxes alone.

JEFFREY Z. GARNEY—OMAHA WORLD-HERALD

LEAN JOBS AT NEBRASKA BEEF

These workers start at about $8 an hour and may work their way up to $9 if they stick around for four years. Many don't: the turnover rate for the subsidized jobs is more than 50%

WHAT WAS PAID OUT

$22 million to $29 million in job, tax and investment credits, grants and other assorted subsidies

$2.5 million to train workers

HOW IT PAID OFF

Low-paying jobs. Because of the high turnover rate, the training money ran out in less than a year, so more than 200 replacement workers were never trained. Others continue to flee these grueling jobs

NEBRASKA

The Job Is Meaty; The Pay Is Not

Not long ago, the state of Nebraska created an authority to dispense corporate welfare. It's called the Nebraska Quality Jobs Board. So what does the board consider a "quality job"?

Well, when do you want to go to the bathroom? In the morning or the afternoon? Pick one or the other. Not both. That is your choice at Nebraska Beef Ltd., an Omaha beef-packing company and jobs-board beneficiary. Listen to a young Mexican worker—he has taken a few days off at the suggestion of a supervisor, who noted that immigration agents were coming to the plant to inspect citizenship papers. Listen as the worker describes his daily routine on the factory floor, where he wields a 6-in. knife, slashing carcasses on an assembly line that never slows:

"We tell the [supervisors], 'Hey, I want to use the rest room.' [They say,] 'O.K., 10 minutes. Go now.' [That's] only once a day [you can go] ... I have to think if I can go drink some water because I know I'm going to have to go use the rest room." He continues: "We start at 6 o'clock in the morning. But I got there at 5 o'clock to just get ready, drink my coffee, work my steel ... If we work 10 hours, they give us a break at 2:30. If we was going to go nine hours, they don't give us no break."

Nebraska Beef is the entity that got the breaks. The jobs board awarded the company an estimated $7.5 million in tax credits in 1996, as well as a laundry li[redacted]er benefits. The award was all t[redacted]e curious because the company had started work on its new plant before the board even existed. Other aid has pushed the total value of giveaways to Nebraska Beef to between $24 million and $31 million.

An exact total is not available, since the state refuses to disclose the amount of taxpayer funds for this or any other approved project. But Nebraska does say that the tax credits were extended under programs that "could substantially reduce or even eliminate [a] company's tax liability."

When state lawmakers created the jobs board in 1995, they had in mind "major business expansion and relocation projects needed to stimulate the growth of populations and create better jobs for the citizens of Nebraska."

At Nebraska Beef, many of the workers are not citizens, in part because even hardworking Nebraskans aren't likely to come running for jobs that start at about $8 an hour for such grueling la[redacted]e-braska Beef employees c[redacted]nt on a raise of 25¢ an hou[redacted]very year they stay on the job, which means that in two years, a butcher is making $8.50. That is $17,680 a year for a 40-hr. week, about $1,200 above the poverty level for a family of four.

Not surprisingly, Nebraska Beef goes through employees the way it does carcasses: at one point, 50% of the workers who completed state training for their jobs were gone within 10 months. A review by the state auditor of public accounts showed that Nebraska Beef had used at least a million dollars in state funds in one year to train workers who eventually left their jobs. The audit noted dryly, "It would appear the number of employees no longer employed with the company and amount of money spent for job training on these individuals was not in the best interest of the state of Nebraska."

Nebraska Beef did not respond to our inquiries.

"Want to go to the bathroom? Sorry, you went this morning"

NEW YORK

When Factories Become Fixer-Uppers

Defenders of economic incentives like to say that safeguards can be built into the law, so that if companies fail to deliver on the promised number of jobs, they can be required to pay back the taxes that have been canceled. If you believe that, it might be worth pondering the story of ABB Instrumentation Inc. in Rochester, N.Y. The company, which makes industrial instruments, is a subsidiary of ABB Asea Brown Boveri Ltd., the giant Swiss and Swedish conglomerate with interests in power generation, transmission and distribution.

In 1991, ABB applied to the County of Monroe Industrial Development Agency, requesting tax breaks and other incentives to move from its aging downtown Rochester location into a new building in a suburban industrial park. The company explained that its plant, built in 1906, was in a "declining industrial neighborhood on the west side of Rochester." ABB said there had been "no significant cost improvements or modernization ... since 1950," which threatened its "ability to compete in a tightening world market." In short, neither ABB nor its predecessor had spent money updating the plant.

Nonetheless, the company was quite blunt about what it would do if economic aid was not forthcoming: relocate to Ohio, or England, or even Mexico or Venezuela. Only then did COMIDA agree to issue $21 million in industrial revenue bonds, with ABB using the proceeds to erect a new building. COMIDA excused the company from paying sales tax on materials to construct the plant. And it waived a chunk of ABB's real estate taxes for 10 years. Overall, the tax breaks were worth about $5 million.

To secure a real estate-tax abatement, a company is required by Monroe County to guarantee that it will create 25 new jobs. If it fails to do so, it must refund a portion of the reduced taxes. ABB promised to boost employment at the new facility from 723 workers in the first year to 819 by the third. Instead, even before moving into its new building, the company began cutbacks. By December 1996, ABB reported that its work force totaled just 393. In short, rather than creating the 25 positions required by the county, ABB eliminated 426 real and projected jobs.

Then ABB cried poverty, telling the development agency, "If you rescind the tax exemption, we'll owe $1.2 million in taxes, which we can't afford."

To date, Monroe County has waived collection. Thus, a division of a multinational company—which had sales of $31 billion last year—received some $26 million in tax breaks and economic aid. For what? To eliminate 426 jobs.

ABB illustrates another corporate-welfare story that TIME encountered repeatedly. After failing to keep a facility up to date, a company claims a plant is "archaic" and threatens to close it unless government officials come up with incentives to help pay for modernization. That is what happened in Louisville, Ky., where a much larger conglomerate, General Electric Co., said that to meet profit goals, its plant had to be modernized—with taxpayer dollars. This from a company that appears at the top of the lists of the "best managed" corporations in America, whose revenue last year reached $91 billion and whose earnings topped $8 billion.

GE, which over the years had failed to update a washing-machine factory in Louisville—described as an "obsolete facility" that is "just one step above archaic"—threatened to close it unless state and local governments helped subsidize its modernization and 7,000 hourly employees agreed to cost-cutting work rules.

Faced with this threat, Kentucky officials hired Coopers & Lybrand, an accounting and consulting firm, to conduct a study—paid for by GE—on whether the company really intended to turn out the lights. The answer Coopers & Lybrand came up with: yes.

It is not clear why the state of Kentucky believed it was the responsibility of taxpayers to improve GE's profit margins. Nevertheless, in 1993, Kentucky granted $19 million in income tax breaks over 10 years to the washing-machine factory in GE's sprawling Appliance Park complex. The city of Louisville and Jefferson County kicked in an additional $1 million.

The tax break notwithstanding, employment in Appliance Park continues to fall. Last February, GE announced that over the next two years, 1,500 jobs would be eliminated as range and dryer production is phased out and moved to Georgia, where wages are lower, and Mexico, where wages are much lower. Today 6,200 people work in Appliance Park—down 72% from a high of 22,250 in 1973.

KARIM SHAMSI—BASHA FOR TIME

IN THE SHADOW OF MERCEDES

Kids in Vance, Ala., are part of a school district so hard up that it relies on portable classrooms. Nearby is Mercedes' new plant, put up with a $253 million package of incentives

WHAT WAS PAID OUT

$77.5 million for roads, water and sewer lines, and other infrastructure improvements

$92.1 million to acquire the site, build the plant and construct a training school

$83.6 million in training funds, tax rebates and other incentives

HOW IT PAID OFF

Crowded schools. For the Vance Elementary School, it's meant more portable classrooms—the school now has 17—with two a year being added to house the school's burgeoning enrollment

NEW MEXICO

Intel's Billion-Dollar Bunny Suits

With ABB and GE, the threat of losing jobs often became too much for a community to

Monroe County granted $26 million and watched 426 jobs disappear

bear. The workers, their families and local politicians wanted to keep the jobs at all costs.

Yet the same hysteria flows when large, fast-growing high-tech companies start shopping around for new plant locations. Intel Corp. invited six Western states—Arizona, California, New Mexico, Oregon, Texas and Utah—to compete for a new computer-chip fabrication plant, or fab, and selected the winner in March 1993. A senior executive explained the decision this way to the San Jose *Mercury News*: "We're going to build where Intel gets the best deal."

And what a deal it got. New Mexico and the community of Rio Rancho, just north of Albuquerque, won the bidding war by showering Intel with tax abatements and other assistance. Sandoval County, where the company erected its fab, authorized $2 billion in industrial revenue bonds in 1993 and an additional $8 billion in 1995—the largest local-government bond offering in history. The county held title to the land, building and equipment, which it leased back to Intel.

Since governments are not taxable, this arrangement enabled Intel to escape property and sales taxes. Then there is the investment-tax-credit deal, which allows Intel to pocket a portion of the state income taxes withheld from its bunny-suited tech workers' paychecks. In addition, the state provided money to train workers. These and other benefits add up to a third of a billion dollars in aid for Intel.

From Intel's vantage point, that is simply the way the system works. A company spokesperson said that states offer incentives "because they want to compete, and they obviously want the project in their jurisdiction rather than somebody else's ... They try to develop their incentive package around those specific industries ... that they want to build."

In any event, when some local residents challenged the giveaways as too costly, a citizens group supported by Intel commissioned a study to determine the company's impact. It concluded that the incentives "resulted in a good deal for New Mexico" and that Intel's expansion had created 10,000 jobs statewide by 1995.

But a TIME analysis of federal tax-return data raises questions. Let's look at two four-year periods, before and after Intel's massive Rio Rancho project.

Between 1989 and 1992, the number of federal income tax returns filed by New Mexico residents who showed wage income increased by 35,770—or 6.6%. Between 1993 and 1996, when the Intel-related jobs were created, wage returns rose 40,551, or 6.8%, a marginal increase.

More significantly, tax returns showing wages in three income groups ($30,000 to $50,000, $50,000 to $75,000 and $75,000 to $100,000) went up at a faster pace in the 1989-92 period than in the post-Intel era. Only two income groups increased faster in the later years: those at the bottom, with earnings of less than $30,000; and those at the top, with earnings in excess of $200,000.

Even more telling is the jump in the number of federal tax returns from New Mexico claiming the earned income tax credit. That is the credit intended to supplement the income of the working poor. Between 1989 and 1992, the number of such returns went up 14%, from 112,334 to 127,900. But between 1993 and 1996, it climbed twice as fast, shooting up 31%, from 134,613 to 175,797.

And although Intel is one of the largest corporate income taxpayers in the state, it has fared well in recent years. Documents filed with the U.S. Securities and Exchange Commission show that in 1991, Intel paid corporate income taxes to state governments at an effective rate of 8.6%. By 1997, while the company's taxable income had spiraled upward 1,097%, its overall state tax rate had dropped to 4.8%.

Let's put those numbers in more personal terms. Suppose in 1991 you had a household income of $30,000. If your in-

PHILADELPHIA

NEW MATH: $323,000 TO BUY A $50,000 JOB

IN 1997 THE CITY AND STATE GAVE INCENTIVES WORTH $307 million to Kvaerner ASA, a Norwegian global engineering and construction company, to reopen a portion of the defunct Philadelphia Naval Shipyard and employ 950 people.

WHAT WAS PAID OUT

Divide the $307 million by 950 jobs, and it turns out each job created cost local taxpayers **$323,000.**

WHEN IT WILL PAY OFF

Let's say the Philadelphia shipyard jobs pay, on average, $50,000. That would mean that each worker pays roughly $6,700 annually in local and state taxes. It will take more than **48 years** of tax collections from the shipyard's employees to earn back the money first granted to create these jobs. And even that assumes that all 950 workers will relocate to Philadelphia from outside the city. In fact, of course, many of the workers will move from existing jobs within the city—where they already pay taxes.

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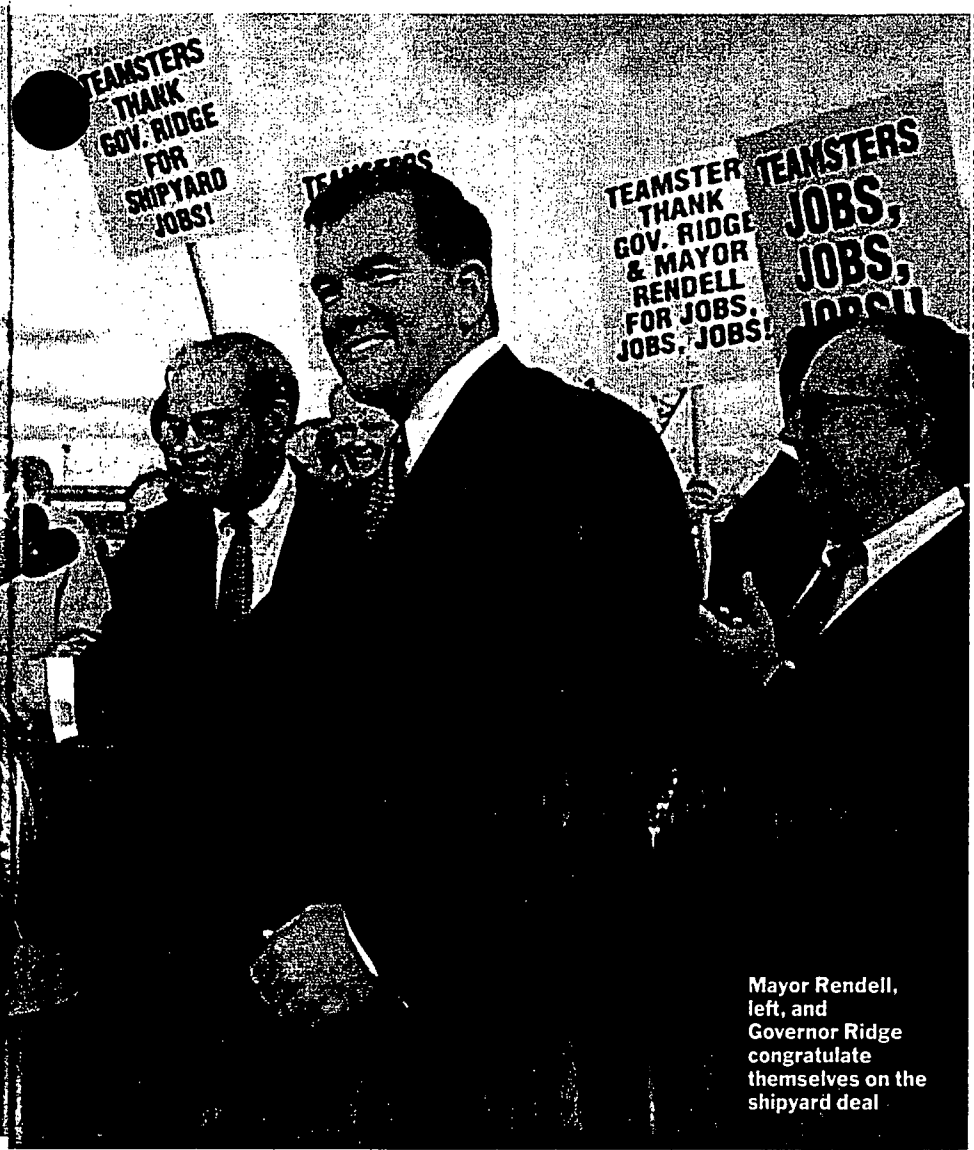
Intel's taxable income increased more than 1,000% i... ix



Mayor Rendell, left, and Governor Ridge congratulate themselves on the shipyard deal

come had gone up at the same rate as Intel's, by 1997 you would have earned $359,100. Yet you would have saved $13,600 in state taxes. And you would owe it to the clout you exercise: the ability to demand and receive special tax treatment.

KENTUCKY

An Extra-Special Delivery for UPS

Among the variables that companies take into consideration in site selection is the labor pool. They are concerned not just with wage rates but also with the availability and quality of workers. So some states and municipalities, in partnership with business, have created industrial-education programs, mainly in community colleges. The schools' curriculums are often designed to train skilled workers for the area's most prominent industries.

The state of Kentucky took a different tack earlier this year when it agreed to create higher-education programs specifically designed to provide United Parcel Service of America Inc. with a steady flow of part-time workers to load and unload packages from airplanes and trucks.

Confronted with a need to build an international air-hub facility and with a shrinking supply of willing workers at existing pay rates, UPS advised Louisville and Kentucky officials that it would pull 15,000 jobs out of the state if it did not receive suitable aid.

Government officials complied. On top of the usual assortment of incentives, worth more than $80 million, they agreed to form a joint educational venture, a sort of UPS University, that will allow students to attend classes offered by the University of Louisville, Jefferson Community College and Kentucky Tech-Jefferson Campus. Students enrolled in what has been dubbed the Metropolitan Scholars Program will be able to earn technical certifications and two-year or four-year degrees.

Most important, college life will be designed to fit the needs of UPS. Student workers, the company says, "will experience a daily schedule that will essentially reverse their internal clocks. Class schedules, social activities and sleep patterns will evolve around the hours of the night shift at UPS." This means classes will be held between 5 p.m. and 10 p.m., allowing students to work through the night and sleep during the day. Classes cease between Thanksgiving and New Year's Day, the company's peak delivery period. Special dorms will be built to accommodate the night-working students. Tuition will be free, with the state and other sources picking up half the cost and UPS the other half if "the student completes his or her work obligation."

To Kentucky Governor Paul Patton, this is one for the win column. "We will ensure that UPS has the workers it needs," he said. To fiscal conservatives, there is something wrong with this picture. If UPS wants to assure itself an adequate supply of labor, it might try raising wages. But with well-paying jobs now plentiful in the area, the company was having difficulty attracting a sufficient number of workers for part-time work, much of which is on the night shift. College students—the traditional source of night-shift workers for UPS—were not responding to the $8.50 an hour wage it offered, even with benefits. So the state will, in effect, create more college students.

Local authorities defend the deal with a rosy economic forecast prepared for Greater Louisville Inc., the metropolitan area Chamber of Commerce. The chamber study predicts that 6,000 UPS jobs "will spawn nearly 8,000 additional jobs" throughout the region. It is estimated that all those jobs in turn "will generate more than $477 million annually in payroll growth." As is the case with many economic-impact statements, the numbers are fuzzy. But whatever the case, growth would have occurred somewhere in the U.S., perhaps even in

...ut its state income tax rate nationwide fell nearly by half.

THE SCRAMBLE FOR JOBS

PLAYING THE ZERO-SUM GAME

IF YOU HAVE ANY DOUBT THAT THE WAR AMONG THE STATES TO OFFER TAX breaks and other economic incentives is a zero-sum game that creates no jobs, consider the case of the Bagcraft Corp., based in Chicago. In 1993, Bagcraft, whose claim to fame is the doggie bag, let out word that the paper bag–making factory it had operated in Joplin, Mo., for more than 20 years would be replaced.

Six towns in Missouri, Kansas and Colorado jumped at the bait, offering the company free land, infrastructure improvements and real estate–tax abatements. Meanwhile, Joplin tried hard to keep Bagcraft in town, assembling what a city official described as the most aggressive incentives package in this small (pop. 45,000) city's history—tax abatements for as long as 12 years, plus a town-funded day-care center for Bagcraft employees. "When you offer a private company incentives worth $5 million, coming from the taxpayers, I don't know how much more you can do," said Joplin city manager Leonard Martin.

Neighboring Baxter Springs, Kans., came up with more—a lot more. Working with state officials, the town of 4,000 crafted a deal that included free land and a 10-year exemption from real estate taxes. But Baxter Springs trumped Joplin by finding a low-interest loan from the U.S. Department of Housing and Urban Development. The final tab: $15.8 million, or more than seven times the size of the town budget.

Not surprisingly, Baxter Springs won out. In 1994, Bagcraft closed the Joplin plant and moved 20 miles west across the state line to a new $12 million, 265,000-sq.-ft. facility.

All this was cause for celebration in Baxter Springs when, on Nov. 18, 1994, corporate and civic leaders gathered to dedicate the new plant. Of the participants, none was more pleased than then Kansas Governor Joan Finney. "Dreams are the seedlings of reality," she told the crowd. "Seeing what has been brought to reality here, through governmental cooperation at all levels with the company, is perhaps one of the best days I've had in 42 years of government service at different levels."

Let's hope not.

Baxter Springs did get 350 jobs, but Bagcraft did not create 350 jobs. Roughly half the work force transferred from the Joplin plant when it closed. Additional employees migrated from other Bagcraft plants that were closed.

The bottom line for the company's payroll: in 1993 about 700 people were making bags and other paper products at four Bagcraft plants. According to a company spokesman, today that number is the same.

MIKE GUILLET—JOPLIN GLOBE

ANOTHER OPENING of a subsidized plant that mainly transferred jobs from elsewhere. Here Joan Finney greets Bagcraft plant managers

WHAT WAS PAID OUT

$15.8 million, including free real estate, a 10-year freeze on property taxes and a low-interest loan from HUD

HOW IT PAID OFF

It didn't. Bagcraft closed plants in Missouri, New Jersey and Georgia. New jobs created nationwide: zero

Louisville, where UPS is already heavily invested. To remain competitive, UPS had no choice but to build an air-hub fac[illegible]ome-where, with or without taxpay[illegible]rs.

ALABAMA

Singing Lessons from An Auto Company

There was no question that like UPS, Mercedes-Benz was going to build a plant someplace in this country. First of all, the U.S. is an important market for Mercedes; second, wages and more flexible work schedules make manufacturing costs lower here than in Europe.

Lower than Mercedes-Benz ever imagined. Alabama taxpayers essentially built and equipped a new plant for the company in the tiny town of Vance, a few miles east of Tuscaloosa. Mercedes received a package of incentives that totaled $253 million in value. For example, Alabama acquired and developed the plant site in Vance for $60 million. It used National Guard troops to clear the land and spent $77.5 million on utility improvements and roads.

The Mercedes-Benz plant illustrates a fundamental principle of corporate welfare: everyone else pays for economic incentives—either with higher t[illegible]wer services or both.

To understand this, go to the Vance Elementary School, located a football field or two from the plant. Of course, you cannot actually see the school building. That is because it is surrounded by portable classrooms—17 in all. They are being added at the rate of two a year. Inside the school, the results of crowding 540 pupils (expected to be 700 to 800 within the next two years) into a building designed for 290 are readily apparent—a marked contrast with the roominess of the $30 million training school the state built for Mercedes. Throughout the school day, students stand in line to take their turn in one of the six tiny rest rooms serviced by a septic system, which produces its own unpleasant consequences on occasion, since the septic tanks were also built for 290 pupils. That contrasts with the new sewer lines the state laid for Mercedes. Then there is the cafeteria. Because of the overcrowding, lunch starts at 10:30 a.m.—soon to be 10:15—not long after many pupils ate breakfast. Last there is the safety issue. Vance and other schools in the area are in the middle of tornado alley. Whenever a tornado watch is

Baxter Springs offered seven times the town budget to lure a p[illegible]t

sounded, the portable classrooms are emptied, and pupils are shepherded into classrooms in the main building.

To be sure, Mercedes is not responsible for all these deficiencies. Alabama traditionally has ranked near the bottom of the 50 states when it comes to education. But the presence of Mercedes has not added anything, except more students.

Nevertheless, at the elementary school, principal David Thompson is an unabashed Benz booster. When the school needed extra buses to transport pupils to the ballet, Thompson said, Mercedes provided them. And when the car company learned the school was mounting a production of *Hansel and Gretel*, it dispatched several of its expats to help the pupils learn German songs. The experience made a lasting impression on the students. As Thompson put it, "They couldn't tell you your multiplication tables if you asked them. If you say, 'What's 9 times 7?', they probably have already forgotten it. But they can still sing those songs in German."

OHIO

Does GM Mean General Movers?

Given the money politicians are willing to spend, it is no wonder companies have made their assets portable—game pieces that can be moved around the board of economic development. General Motors Corp. has played the game like a champion, a classic example of a company that has secured hundreds of millions of dollars in corporate welfare at the same time that it has eliminated thousands of jobs. And, according to business analysts, GM has to eliminate 50,000 more jobs if it wants to survive the next century.

In effect, the company is in the process of auctioning its surviving jobs to the highest bidders in the communities where it does business. Here's how it works: during the summer of 1997, GM let it be known that it was considering a $355 million expansion of an assembly plant in Moraine, Ohio, to build sport-utility vehicles. The decision would hinge on the size of tax breaks granted by the city government. After all, two other cities with GM truck plants—Shreveport, La., and Linden, N.J.—were vying for the new facility. At least that is what GM officials hinted to Moraine officials. And that is what the local newspaper, the Dayton *Daily News*, duly reported.

There was one problem. The story GM floated was not true. Company executives later apologized for any misunderstanding. Erroneous claims aside, Moraine agreed to exempt General Motors from taxes on $355 million worth of machinery, equipment and inventory for 10 years and to excuse the company from real estate taxes for 15 years on the planned $65 million building.

So how much did GM save? Moraine city officials will not say, but county officials estimate GM is off the hook for $30 million in real estate and personal property taxes. GM also put the touch on the county economic-development au-

DURANT, MISSISSIPPI

WHERE IT ALL BEGAN

IN 1936, IN THE MIDST OF THE GREAT DEPRESSION, MISSISSIPPI FIRED THE FIRST shot in what is now an internecine, multibillion-dollar battle for jobs among the states. The idea was simple enough: lure businesses from the North with offers of cheap and abundant nonunion labor, low-priced land, minimal taxes and, for the first time, state-sponsored, tax-exempt industrial-revenue bonds. In other words, a coordinated effort to raid other states for their corporations.

The first beneficiary was Real Silk Hosiery Mills Inc. The company, based in Indianapolis, Ind., employed 4,000 knitting-machine operators who turned out half a million pairs of hosiery weekly, which were peddled door to door across the nation by 11,000 sales reps. Hurt first by the Depression and then by a bitter strike in 1934, Real Silk was working its way back to solvency in 1936 when Mississippi came calling.

COURTESY INDIANAPOLIS HISTORICAL SOCIETY

THE ORIGINAL: Real Silk Hosiery mill in Indianapolis—before the job wars

The town of Durant (pop. 2,500), a farming community with more sidewalks than paved streets, was offering to issue $25,000 in industrial-revenue bonds to buy land and erect a 15,000-sq.-ft. building, which it would lease to Real Silk for 25 years for all of $5 a year. In addition, Durant would waive five years of county taxes on the building and property taxes on the machinery. On top of that, the city would provide insurance, set up a training school and even erect housing for workers. In a front-page editorial that sounds eerily familiar, the Durant *News* crowed that the project was a great deal for the town. In a special election, the town's voters approved the bond issue, 330 to 19. The people of Durant were in the hosiery business.

At least for a while. Indeed, nine years later, in December 1946, Durant's citizens approved a second bond issue of $60,000 to expand the plant. At its peak, the Durant factory employed about 150 people. They worked three shifts daily, turning out 84,000 pairs of hosiery each week.

By the mid '50s, all that came to an end. Before the first bond was due to be paid off, Real Silk shut all its factories, including Durant, sold off the equipment and became an investment company. The lesson, one that has been lost on generations of mayors, Governors and Presidents, is that capital ultimately ignores such incentives. It seeks its highest reward as dictated by market forces, not political ones. The building that was to put Durant on the industrial map still stands—empty.

And Mississippi? It was the poorest state in the nation when its corporate-welfare program began in 1936. Today, 62 years and hundreds upon hundreds of millions of dollars in economic incentives later, it remains dead last in per capita income.

GM auctions its dwindling jobs to whichever towns bid the most

thority for a cash grant of $1 million.

GM extracted the concessions at a time when the company's profits for 1995 and 1996 totaled $11.8 billion. To put that figure in context, it would be enough money to run the West Carrollton schools, where most Moraine children attend classes, for the next 400 years. As 1997 gave way to 1998, GM dangled the possibility of yet another plant before the Moraine city fathers, and they jumped. This time the tax relief amounts to an estimated $28 million—or about $156,000 for each of the 180 new jobs to be created.

One final twist: Moraine employees will be hired under a new, three-tiered wage scale, with workers starting at about $9 an hour. Once upon a time, the starting wage for such jobs was in the double digits. Nonetheless, Mayor Roger Matheny said that "this offers us job security and lets us know GM is going to be here for a long while."

Not necessarily. Other communities have showered tax breaks on GM and its partners, assuming they would create or at least retain jobs. They were wrong. Volvo-GM closed a jointly owned plant (GM was the minority partner) in Orrville, Ohio, in 1996—just seven years after the county cut property and inventory taxes in half. Some 400 jobs were lost.

The two automakers moved operations t Pulaski County, Va., where millions of dol lars more in economic incenti ited.

In 1984 and 1988, Ypsilan ship Mich., granted 12-year tax abate ents o $250 million worth of new equipment an machinery that GM installed in its Willo Run assembly plant. On its application fo the second tax abatement, GM said no ne jobs would be created but 4,900 existing job "will be retained as a result of the project." GM executive reaffirmed the company' commitment at a township board meeting.

But in February 1992, GM announced i intended to close Willow Run and mov production to Arlington, Texas, where it go a better deal. The township countered wit a lawsuit, charging that the tax abatement created a binding obligation. A local judg agreed, accusing GM of "having lulled" th people of Ypsilanti and then trying to ski town. The state court of appeals reverse the decision and concluded that "hyperbol and puffery" in seeking tax breaks "does n necessarily create a promise."

In interviews with TIME, GM executive say they merely do what everyone else doe Moreover, they say, local and state govern ments often come calling on them. As a GM official explained, when Saturn was con ceived, it was a clean sheet, a new type o plant representing a huge inves Onc it became publicly known w wa planning, he said, "we receive posal from every state in the union except Hawa and Alaska. We had file cabinets full of ma terial from every state ... Every one had t be responded to. It took on a life of its own.

Yet there had to be states that knew GM could not build there just for logistical rea sons, he said. Nevertheless, government o ficials submitted formal proposals so the could tell their constituents they had at lea tried. "[A politician] always wants to be per ceived as someone who tried to bring hom the bacon, even if the bacon doesn't arrive

And that is where the real blame fo corporate welfare rests.

As Ohio state senator Charles Horn, persistent critic of tax abatements, put when commenting on concessions grante GM, "We know companies are manipula tive, but it's the nature of business to go a ter every dollar that's legally available. Don place the blame on the company; place th blame on government. This is government folly." *—With reporting by Laura Karmatz an Aisha Labi, and research by Joan Levinstein*

Next Week: *Life with America's Biggest Sugar Daddy*

TIME WARNER

WE PLAY THE GAME TOO

LIKE MOST MAJOR CORPORATIONS, Time Warner Inc., the parent company of TIME, has received millions of dollars in tax concessions or free services from federal, state and local governments over the years. The benefits include:

- A $2 million-a-year exemption from Florida sales taxes on promotional items mailed from the Time Customer Service Center in Tampa, which sells and renews magazine subscriptions to TIME, PEOPLE, LIFE and SPORTS ILLUSTRATED.
- A five-year freeze on real and personal property taxes (a savings of $224,550) from Shelby County and Memphis, Tenn., on an operations center for cable installers.
- A rebate of $168,800 from Simi Valley, Calif., to defray construction costs of a warehouse for Warner/Electra/Atlantic Corp., a music subsidiary.

ARTIST'S VISION: New offices for Time Warner near New York's Central Park

Time Warner is based in New York City, and the company is expected to ask the city for a large incentives package for building its new headquarters at Columbus Circle, on the southwest corner of Central Park. Known as Columbus Centre, the $1.3 billion project has been called by one developer the "Rockefeller Center of the 21st Century." Time Warner president Richard D. Parsons confirmed that the company would ask for tax breaks—though he emphasized that the project was not contingent upon receiving them.

If Time Warner gets a special deal from New York, it will join a host of media companies that have received tax relief and other incentives worth an estimated $400 million to build new offices or to keep their work forces in New York. The list includes Germany's Bertelsmann AG, which now owns Random House and Bantam Doubleday Dell; ABC, part of the Walt Disney Co.; Condé Nast; McGraw-Hill; NBC, owned by General Electric; the New York Times Co.; the New York *Post* and its parent company, the News Corp., which also owns Fox; Reuters; and Viacom.

"Companies are manipulative. It's the nature of business."

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1665 A BILL TO BE ENTITLED AN ACT TO AMEND TAX LAWS RELATED TO INTERSTATE AIR COURIERS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1665
PROPOSED COMMITTEE SUBSTITUTE H1665-PCS5450-LYx-49

Short Title: Interstate Air Couriers - Bill Lee. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND TAX LAWS RELATED TO INTERSTATE AIR COURIERS AND TO AMEND THE WAGE STANDARD UNDER THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT TO ACCOUNT FOR THE VALUE OF HEALTH INSURANCE TO PART-TIME JOBS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3(13) and (15) read as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(13) Hub. – Either of the following:

a. An interstate air courier's hub is ~~the airport in this State that meets all of the following conditions:~~

~~1. The air courier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.~~

~~2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.~~

~~3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.~~the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

...

(15) Interstate air courier. – A person ~~engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.~~whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service."

SECTION 2. G.S. 105-129.2A is amended by adding a new subsection to read:

"(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 3. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training if, for the calendar year the jobs are created or the worker training is provided, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, the credit for investing in real property for a central office or aircraft facility, or the credit for substantial investment in other property if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit.

Part-time jobs for which the taxpayer provides health insurance as provided in subsection (b2) of this section are considered to have an average weekly wage at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located. There may be a period of up to 100 days between the time at which an employee begins a part-time job and the time at which the taxpayer begins to provide health insurance for that employee.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the

county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 4. G.S. 105-129.4(b1) reads as rewritten:

"(b1) Large Investment. – A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. In the case of an interstate air courier that has or is constructing a hub in this State, this investment may be placed in service in connection with the eligible business within a seven-year period. If the taxpayer fails to make the required level of investment within ~~this two year~~the applicable period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section."

SECTION 5. G.S. 105-129.5(c) reads as rewritten:

"(c) Carryforward. – Any unused portion of a credit with respect to a large investment, with respect to the technology commercialization credit allowed in G.S. 105-129.9A, or with respect to substantial investment in other property under G.S. 105-129.12A may be carried forward for the succeeding 20 years. Any unused portion of a credit with respect to research and development activities under G.S. 105-129.10 may be carried forward for the succeeding 15 years. Any unused portion of a credit may be carried forward for the succeeding 10 years if, before the taxpayer claims the credit, the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with the eligible business within a two-year period, at least fifty million dollars ($50,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. In the case of an interstate air courier that has or is constructing a hub in this State, this investment may be placed in service in connection with the eligible business within a seven-year period. If the taxpayer fails to make the required level of investment within ~~this two year~~ the applicable period, the taxpayer forfeits this

enhanced carryforward period. Any unused portion of any other credit may be carried forward for the succeeding five years."

SECTION 6. G.S. 105-129.8(d) reads as rewritten:

"(d) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. In the case of an interstate air courier that has or is constructing a hub in this State, the applicable time period is seven years. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the ~~two-year~~applicable commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the ~~two-year~~applicable period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection."

SECTION 7. G.S. 105-129.9(e) reads as rewritten:

"(e) Planned Expansion. – A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. In the case of an interstate air courier that has or is constructing a hub in this State, the applicable time period is seven years. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the ~~two-year~~ applicable period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the ~~two-year~~applicable period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

SECTION 8. Section 22 of S.L. 1998-55, as amended by Section 16(a) of S.L. 2001-476, reads as rewritten:

"Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1,

1999, and expires January 1, ~~2008.~~2010. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date."

SECTION 9. It is the intent of the General Assembly that the provisions of this act not be expanded. If a court of competent jurisdiction holds any provision of this act invalid, the section containing that provision is repealed. The repeal of a section of this act under this section does not affect other provisions of this act that may be given affect without the invalid provision.

SECTION 10. Section 1 of this act becomes effective October 1, 2002, and applies to sales made on or after that date. Sections 8 and 9 of this act are effective when it becomes law. The remainder of this act is effective for taxable years that begin on or after January 1, 2002.

House Bill 1665:
Interstate Air Couriers - Bill Lee

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Gray
Date:	August 27, 2002	**Analysis by:**	Y. Canaan Huie
Version:	PCS to 1st Edition		Staff Attorney

SUMMARY: ***This bill makes numerous changes to tax laws regarding interstate air couriers including the following: a new definition of "hub" for sales tax purposes; an extension of the Bill Lee Act until***

BACKGROUND: The William S. Lee Quality Jobs and Business Expansion Act (hereinafter Bill Lee Act) was enacted in 1996, effective beginning with the 1996 tax year with a 2002 sunset. The Act is a package of State tax incentives and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment and real property, for job creation, for worker training, and for research and development. Counties are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth of the county. For many of the credits, the lower the tier of a county, the more favorable the incentive. The Act requires the Department of Commerce and the Department of Revenue to report periodically on the credits allowed by the Act.

Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the Bill Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would have located or expanded in any case. In 1997, the General Assembly amended the Bill Lee Act to make interstate air couriers[1] an eligible business under the Act. In 1999, the General Assembly extended the 2002 sunset to 2006.

To be eligible for the credits under the Bill Lee Act, jobs must meet the applicable wage standard. For the credit for worker training or the credit for creating new jobs, the average wage of the jobs for which a credit is claimed and the average wage of all jobs at the location are required to meet the applicable wage standard. For the credit for investing in machinery and equipment, the credit for research and development, and the credit for investing in central office and aircraft facility property, the average wage of all jobs at the location with respect to which a credit is claimed are required meet the applicable wage standard. For a tier one county, the jobs are required to pay an average weekly wage that is equal to the applicable average weekly wage for that county. For other tier counties, the average weekly wage of the jobs must equal 110% of the applicable average weekly wage for that county.[2]

In 1998, the General Assembly provided sales tax and property tax reductions for interstate air couriers in order to encourage the development of air courier hubs in North Carolina. Effective January 1, 2001, sales to an interstate air courier of equipment for handling and storing materials at its hub became subject to a reduced sales tax of 1%, capped at $80 per item. In addition, interstate air couriers enjoy a sales tax

[1] An air courier is an air carrier that delivers individually addressed letters, parcels, and packages. Examples of air couriers include UPS and Federal Express.

[2] House Bill 1734, which has passed the House, would eliminate the wage standard in tiers one and two.

exemption for purchases of aircraft lubricants, aircraft repair parts, and aircraft accessories for use at the air courier's hub in this State. Effective beginning with the 2001 property tax year, there is a property tax exemption for aircraft owned by an air courier and apportioned for property tax purposes to the courier's hub in this State.

ANALYSIS: Section 1 of this bill amends the definition of "hub" for interstate air couriers and recodifies the definition of "interstate air couriers" for sales tax purposes. The amendment to the definition of "hub" is needed because the current definition does not accurately describe hubs. The current definition states, in part, that a hub is the airport in the State where the air courier has allocated at least 60% of its aircraft value apportioned to this State. Aircraft value is apportioned based on revenues generated and on the amount of time the aircraft is on the ground. In the case of air couriers, revenue is generated at the customer site, not at the hub. Additionally, aircraft spend very little time on the ground at the hub. For these two reasons, the definition of an air courier hub currently in the statutes does not fit the factual situation. This bill defines a hub as the primary airport in the State for sorting and distributing packages from which the air courier has, or expects to have, at least 150 departures a month. This definition is similar to the definition of "hub" under South Carolina law, but is a more stringent test as South Carolina only requires 25 departures a month.

The definition of "interstate air courier" is not substantively amended. Currently, for sales tax purposes, the definition of interstate air courier refers to the definition used in the Bill Lee Act. In this bill, the definition of "interstate air courier" for sales tax purposes is made a stand-alone definition. There is not substantive change to the definition.

Section 2 of this bill extends the sunset date on the Bill Lee Act until January 1, 2010, for certain interstate air couriers and **Sections 4 through 7** of the bill increase various time frames in the act from two years to seven years. The interstate air courier industry, and the construction of a hub in particular, faces many regulatory, administrative, and legal hurdles not generally faced by other industries. Due to these extra burdens, time frames in this industry are generally longer than in other industries. There is generally a longer period between the time that a project is announced and a location is selected and the time at which the facility is placed in service. Due to these longer time frames, it is argued that an extension of the sunset and extensions of various time frames are needed to accommodate these projects.

Section 3 of this act amends the wage standards under the Bill Lee Act for all taxpayers. Currently, in order to be eligible for any of the credits under the Bill Lee Act, the average wage of all jobs at the location must meet or exceed the applicable average weekly wage for the county in which the jobs are located.[3] Included in this calculation are part-time jobs, converted to a full-time equivalency. It has been argued that since part-time jobs are not eligible for a credit for job creation, they should not be considered in this calculation. This has become an issue since part-time jobs generally pay less than full-time jobs.

This bill takes a middle ground. All part-time jobs must still be considered when the wage calculation is made. However, any part-time job for which the taxpayer provides health insurance will be considered to have a wage that at least meets the applicable average weekly wage. If a part-time job with health insurance has a wage that is less than the applicable average weekly wage, the applicable average weekly wage shall be used in making the calculation. If a part-time job with health insurance has a wage that is greater than the applicable average weekly wage, the actual wage of the job shall be used in making the calculation.

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[3] As mentioned above, for the credits for job creation and for worker training, the average wage of the particular jobs for which the credit is claimed must also meet or exceed the applicable average weekly wage.

Section 8 of this bill provides an extension of the bidding law exemption for the Piedmont Triad Airport Authority. When the General Assembly enacted certain tax incentives for interstate air couriers in 1998, one provision of that act granted a bidding law exemption for the Piedmont Triad Airport Authority. The exemption is effective beginning January 1, 1999, and applies to design and construction of an air freight distribution facility on airport property, and related supplies, equipment, and services. S.L. 2001-476 (Senate Bill 748) provided an extension of this exemption from January 1, 2004, to January 1, 2008. Fed Ex has requested an additional extension to January 1, 2010. With this extension, the bidding law exemption would sunset at the same time as the Bill Lee Act for certain interstate air couriers.

Section 9 of this bill is a severability clause. It states that it is the intent of the General Assembly that the provisions of this bill not be expanded. It further states that if any provision of this bill is found to be unconstitutional that provision is repealed and that other provisions that may still be given effect remain in place.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: August 13, 2002

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: Proposed House Comm. Sub. For HB 1665 (Interstate Air Couriers-Bill Lee)

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES	(See "Assumptions and Methodology")				

PRINCIPAL DEPARTMENTS AFFECTED: The Bill Lee Act credits are administered by the Department of Commerce and the Department of Revenue. The enactment of the bill should not affect the budget requirements of either department.

EFFECTIVE DATE: The air courier hub definition rewrite becomes effective October 1, 2002 and applies to sales made on or after that date. The bidding law exemption effective date change becomes effective when the bill becomes law. The remaining sections of the bill become effective for tax years beginning on or after January 1, 2002.

ISSUE BACKGROUND: The Bill Lee Act is the package of state tax incentives that was first adopted in 1996 and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research/development. The credits apply to activities undertaken by specifically named industrial classifications. In 1998 the Act was amended to provide sales and property tax incentives to air courier hubs.

BILL SUMMARY: (1) Rewrites the definition of interstate air courier hub. (2) Extends the regular Bill Lee Act sunset of January 1, 2006 to January 1, 2010 for an interstate air courier that enters into a major real estate lease on or before January 1, 2006 with an airport authority (3) The Lee Act contains wage standards for determining eligibility for the tax credits. The bill rewrites the standard by allowing part-time jobs for which the taxpayer provides health insurance to be counted as having wages at least equal to the standard times the applicable average weekly wage for the county in which the jobs will be located. (4) Currently, taxpayers who may an investment of $150 million or more within a two-year period may be eligible for enhanced incentives. The bill provides for a 7-year investment period for an interstate air courier that has, or is constructing, a hub in North Carolina. (5) Extends the sunset on the Piedmont Trial Airport Authority's exemption from the bidding laws from January 1, 2004 to January 1, 2010.

ASSUMPTIONS AND METHODOLOGY: The fiscal note for the 1998 legislation creating the air courier hub incentives contained fiscal estimates of the sales and property tax incentives. The delay in the construction of the Fed Ex facility has no effect on these estimates. The delay simply means that the incentives will be used at a later date than anticipated in the 1998 bill. The extension of the sunset from 2006 to 2010 will allow

It is possible that the modification to the wage standard will enable some companies not currently eligible for the Lee Act credits to become eligible. Discussions with officials of the Department of Commerce did not yield any information on how many taxpayers might become eligible or the impact on tax credit usage.

SOURCES OF DATA: Discussions with representatives of Fed Ex (sales tax incentives) and Department of Commerce (wage standard issue).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 1

HOUSE BILL 1665*

Short Title:	Interstate Air Couriers - Bill Lee.	(Public)
Sponsors:	Representative Gray.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND TAX LAWS RELATED TO INTERSTATE AIR COURIERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-164.3(13) and (15) read as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(13) Hub. – Either of the following:

a. An interstate air courier's hub is ~~the airport in this State that meets all of the following conditions:~~

~~1. The air courier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.~~

~~2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.~~

~~3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.~~the interstate air courier's principal airport within the State for sorting and distributing letters and packages and from which the interstate air courier has, or expects to have upon completion of construction, no less than 150 departures a month under normal operating conditions.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport.

...

(15) Interstate air courier. – A person ~~engaged in the air courier services business, as defined in G.S. 105-129.2, in interstate commerce.~~whose primary business is the furnishing of air delivery of individually addressed letters and packages for compensation, in interstate commerce, except by the United States Postal Service."

SECTION 2. G.S. 105-129.2A is amended by adding a new subsection to read:

"(a1) Sunset for Interstate Air Couriers. – Notwithstanding subsection (a) of this section, in the case of an interstate air courier that enters into a real estate lease on or before January 1, 2006, with an airport authority that provides for the lease of at least 100 acres of real property with a lease term in excess of 15 years, this Article is repealed effective for business activities that occur on or after January 1, 2010."

SECTION 3. G.S. 105-129.4(b) reads as rewritten:

"(b) Wage Standard. – A taxpayer is eligible for the credit for creating jobs or the credit for worker training if, for the calendar year the jobs are created or the worker training is provided, the average wage of the jobs for which the credit is claimed meets the wage standard and the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. No credit is allowed for jobs not included in the wage calculation. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, the credit for investing in real property for a central office or aircraft facility, or the credit for substantial investment in other property if, for the calendar year the taxpayer engages in the activity that qualifies for the credit, the average wage of all jobs at the location with respect to which the credit is claimed meets the wage standard. In making the wage calculation, the taxpayer must include any positions that were filled for at least 1,600 hours during the calendar year the taxpayer engages in the activity that qualifies for the credit even if those positions are not filled at the time the taxpayer claims the credit. However, in the case of an interstate air courier, the taxpayer may exclude part-time jobs in making the wage calculation.

Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the

county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State. The Department of Commerce must annually publish the wage standard for each county."

SECTION 4. G.S. 105-129.4 is amended by adding a new subsection to read:

"(h) Special Time Periods for Interstate Air Couriers. – In the case of an interstate air courier that has or is constructing a hub in this State, the terms 'two years' and 'two-year' are replaced by the terms 'five years' and 'five-year' respectively each place they occur in this Article."

SECTION 5. G.S. 105-129.9(b) reads as rewritten:

"(b) Eligible Investment Amount. – The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that are in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that were in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State. Notwithstanding the other provisions of this subsection, in the case of an interstate air courier that has or is constructing a hub in this State, the eligible investment amount is the cost of the machinery and equipment at the hub that was not used and transferred by the interstate air courier from another location in this State."

SECTION 6. Section 22 of S.L. 1998-55, as amended by Section 16(a) of S.L. 2001-476, reads as rewritten:

"Section 22. Section 10 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. Section 11 of this act becomes effective January 1, 1999, and expires January 1, ~~2008.~~2010. The remainder of Part III of this act becomes effective January 1, 2001, and applies to sales made on or after that date."

SECTION 7. It is the intent of the General Assembly that the provisions of this act not be expanded. If a court of competent jurisdiction holds any provision of this act invalid, the section containing that provision is repealed. The repeal of a section of this act under this section does not affect other provisions of this act that may be given affect without the invalid provision.

SECTION 8. Section 1 of this act becomes effective July 1, 2002, and applies to sales made on or after that date. The remainder of this act is effective for taxable years that begin on or after January 1, 2002.

MINUTES
HOUSE COMMITTEE ON FINANCE

August 29, 2002

The House Committee on Finance met on Thursday, August 29, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen, Monroe Buchanan, and William Wainwright, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Martha Alexander, Leslie Cox, Pete Cunningham, Michael Decker, Rick Eddins, Zeno Edwards, Lyons Gray, Joe Hackney, Bill Hurley, Eugene McCombs, Mia Morris, Art Pope, John Rayfield, Jennifer Weiss, Shelly Willingham, and Larry Womble. Staff members present were Trina Griffin, Martha Walston, Richard Bostic, and Michelle Nelson. A Visitor Registration Sheet is attached and made a part of these minutes. Mr. Chiyoshi Hatakeyama, Researcher, N. C. State Policy, and Director of Iwate Japan Business, introduced by Rep. Leslie Cox, was a guest of the Finance Committee.

Pages serving the committee were Justin Jetton, Wake County, and Grayson Cave, Wake County.

Sergeants-at-Arms serving the committee were Dusty Rhodes, Bob Fowler, Walter Spell and Bill Freeman.

HOUSE BILL 1313, A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT FOR PERSONS WHO ARE DEAF OR HARD OF HEARING AND TO MAKE CONFORMING CHANGES TO CHAPTER 8B AND CHAPTER 143B, was before the committee.

Rep. Buchanan moved that the Proposed Committee Substitute be before the committee for discussion.

Rep. Alexander, sponsor, came forward to explain the genesis and purpose of the bill, licensure requirements and exemptions, provisional licensing, creation of the North Carolina Interpreter and Transliterator Licensing Board and powers of the Board, reciprocity, expenses and fees, license renewals, list of qualified and available interpreters, the grandfathering clause requirements, and the Board of Education's educational requirements for interpreters and transliterators. She said that, in essence, the bill was designed to assure the deaf of qualified interpreters.

Rep. Luebke noted that the fiscal note showed that the measure would generate $14,125 in revenue and $14, 103 in expenditures.

Rep. Womble asked about opposition to the bill. Rep. Alexander said the initial opposition was from people who felt they needed exemption, but opposition to the bill at present was practically nil.

Rep. Weiss asked if school interpreters would be exempted. Rep. Alexander confirmed that exemption.

Rep. Gray asked if the Board could operate for the $30,000 that was allocated in the fiscal note. Michelle Nelson, Fiscal Research, said the Board proposed to contract for administrative services at a cost of $6,000 per year.

Rep. Jarrell wanted to know the number of people applying for licensure and how the license fee compared with other license fees in similar fields.

Leanne E. Winner, North Carolina School Boards Association, said the schools had asked for exemption because of statewide recruiting problems. They were concerned about lawsuits if they were required to utilize licensed interpreters, but were unable to provide them.

Rep. Weiss expressed concerns about the quality of interpreters and parents' satisfaction with their interpreters. Ms. Winner said there had been no complaints from parents. She felt that if licensed interpreters were required, they would not be able to furnish them. Rep. Alexander added that the bill required that transliterators or interpreters employed in education must annually complete 15 hours of job-related training that had been approved by the local educational agency.

Rep. Cunningham asked what kind of academic or practical training was presently required. He also stated his concern regarding the fee and hoped that it could be made more affordable.

Linda S. Suggs, Legislative Liaison for the Department of Instruction, stated that the current requirement for employment was experience that produced competency in transliterating and interpreting. Competency was assessed at the school system when the individual was employed; after employment, the school system offered whatever training was necessary to increase the individual's competence. Interpreters work under the supervision of qualified teachers or other professionals.

Rep. Allen recognized Dr. H. James Owen, President of Piedmont Community College, and a member of the Legislative Committee for Community College Presidents. He was very supportive of the bill and of the Associate Degree requirement which would qualify more certified instructors.

Linda Harrington, Division of Services for the Deaf and Hard of Hearing, was recognized. She was attending the committee meeting as an observer.

Patricia Houser, North Carolina Registry of Interpreters for the Deaf and Chair of the Licensure Study Committee, spoke to the merits of the bill. The Registry wanted the bill to become law because it desired the upgrading of interpreters' skills. Uncertified interpreters have no responsibility for errors in their interpreting and are not accountable for their work.

Rep. Willingham expressed concerns about the competency of school interpreters. He was also concerned about the education system's current exemption.

Rep. Womble moved for a favorable report for the proposed committee substitute, unfavorable to the original bill. Vote was taken and the proposed committee substitute received a favorable vote.

There being no further business, the Chair adjourned the meeting at 9:45 A.M.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

ATTACHMENTS:

Agenda
Visitor Registration Sheets
Page and Sergeants-at-Arms Sheet

Committee Report for H.B. 1313
Proposed Committee Substitute for H. B. 1313
Bill Analysis for H.B. 1313
Fiscal Note for H.B. 1313
Original Bill

AGENDA

House Finance Committee

AUGUST 29, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

H. B. 1313 – INTERPRETER/TRANSLITERATOR LICENSURE – REP. ALEXANDER

ADJOURNMENT

VISITOR REGISTRATION SHEET

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leane Wynn	NCSBA
Tina Hyde	SBE
Dr. H. James Owen	Piedmont Community College
Mary Burch	Auditorium Learning Center
Cynthia Bennett	DHHS
Matt Osborne	ACC
Angela Terrell	DHHS - DSDHH
Sherry Bridges	DHHS - DSDHH
Linda Harrington	DHHS - DSDHH
Tommy Rhodes	WTCC
John Mobley	GOV OFFICE
Andy Taylor	Rep Alexander's LA
Dr. Carl Benson	Capital Comm
Jacqueline Williams	NCCCS
Jennifer Bennett	NCDPI

House Pages

1. Name: Justin Jetton
   County: Wake
   Sponsor: Miner
2. Name: Grayson Cave
   County: wake
   Sponsor: black
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Dusty Rhodes
2. Name: Walter Spell
3. Name: Bill Freeman
4. Name: Bob Fowler

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1313 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1313
PROPOSED COMMITTEE SUBSTITUTE H1313-PCS5457-LAf-42

Short Title: Interpreter/Transliterator Licensure. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT FOR PERSONS WHO ARE DEAF OR HARD-OF-HEARING AND TO MAKE CONFORMING CHANGES TO CHAPTER 8B AND CHAPTER 143B.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 90D.

"Interpreters and Transliterators.

"**§ 90D-1. Title.**

This Chapter may be cited as the 'Interpreter and Transliterator Licensure Act'.

"**§ 90D-2. Declaration of purpose.**

The practice of manual or oral interpreting and transliterating services affects the public health, safety, and welfare, and therefore the licensure of these practices is necessary to ensure minimum standards of competency and to provide the public with safe and accurate manual or oral interpreting or transliterating services. It is the purpose of this Chapter to provide for the regulation of persons offering manual or oral interpreting or transliterating services to individuals who are deaf, hard-of-hearing, or dependent on the use of manual modes of communication in this State.

"**§ 90D-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Interpreter and Transliterator Licensing Board.

(2) Cued speech. – A tool that utilizes a phonetically based system to enable spoken language to appear visibly through the use of eight

handshapes in four locations in combination with natural mouth movements to allow sounds of spoken language to appear differently.

(3) Educational interpreter or transliterator. – A person who provides accessible communication, using the most understandable language model, to individuals in prekindergarten through grade 12 or in any institution of higher education.

(4) Interpreter. – A person who practices the act of interpreting as defined in this section.

(5) Interpreting. – The process of providing accessible communication, between and among persons who are deaf or hard-of-hearing and those who are hearing. This process includes, but is not limited to, communication between American Sign Language and English. It may also involve various other modalities that involve visual, gestural, and tactile methods.

(6) License. – A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90D-7 entitling the person to perform the functions and duties of an interpreter or transliterator.

(7) Provisional license. – A certificate issued by the Board under G.S. 90D-8 enabling a person to perform the functions and duties of an interpreter or transliterator until the person has successfully completed all of the requirements set forth in G.S. 90D-7.

(8) Transliterating. – The process of providing accessible communication between one or more hearing persons and one or more deaf or hard-of-hearing persons using a form of manually coded English.

(9) Transliterator. – A person who practices the act of transliterating as defined in this section.

"**§ 90D-4. License required; exemptions.**

(a) Except as provided in Chapter 8B of the General Statutes, no person shall practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title 'Licensed Interpreter for the Deaf', 'Licensed Transliterator for the Deaf', or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator unless that person is currently licensed under this Chapter.

(b) The provisions of this Chapter do not apply to:

(1) Persons providing interpreting or transliterating services in religious proceedings.

(2) Persons providing interpreting or transliterating services in mentoring or training programs approved by the Board.

(3) An intern under the supervision of a person licensed under this Chapter to provide interpreting or transliterating services.

(4) Persons providing interpreting or transliterating services in an emergency situation until a licensed interpreter or transliterator can be

obtained. An emergency situation is one where the deaf or hard-of-hearing person is in substantial danger of death or irreparable harm if interpreting or transliterating services are not provided immediately.

(5) Educational interpreters or transliterators.

"**§ 90D-5. Creation of the Board.**

(a) The North Carolina Interpreter and Transliterator Licensing Board is created.

(b) Composition and Terms. – The Board shall consist of nine members who shall serve staggered terms. The initial Board members shall be selected on or before January 1, 2003, as follows:

(1) A member of the North Carolina Association of the Deaf (NCAD) who is deaf and familiar with the interpreting process. This member shall be appointed by the Governor and serve for a term of two years.

(2) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc., (NCRID) with five years experience in a community setting and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the Governor and serve for a term of three years.

(3) An employee of the North Carolina Department of Health and Human Services. This member shall be appointed by the Governor, upon recommendation of the Secretary of the Department, and serve a term of three years.

(4) An interpreter or transliterator for deaf-blind individuals who is licensed to practice as an interpreter or transliterator under this Chapter or a deaf-blind individual who is a member of the North Carolina Deaf-Blind Association and who has knowledge of the interpreting process. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years.

(5) A cued speech or oral transliterator licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of two years.

(6) A member of Self Help for Hard of Hearing (SHHH) with knowledge of the interpreting process and deafness. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years.

(7) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc., (NCRID) with five years experience in an educational setting in grades K-12 and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the General Assembly, upon recommendation of the

Speaker of the House of Representatives, and serve for a term of two years.

(8) A faculty member of an Interpreter Training Program (ITP), an Interpreter Preparation Program (IPP), or a qualified or professional certified instructor of the American Sign Language Teachers Association (ASLTA). This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve for a term of two years.

(9) A public member. This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve a term of two years. For purposes of this section, a public member shall not be licensed under this Chapter or have an immediate family member who is deaf or hard-of-hearing.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms.

(c) Qualifications. – All members of the Board who are required to be licensed under this Chapter shall reside or be employed in North Carolina and shall remain in active practice and in good standing with the Board as a licensee during their terms.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. – The officers of the Board shall be a chair, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected by the Board for two-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. – The Board shall hold at least two meetings each year to conduct business. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

"**§ 90D-6. Powers of the Board.**

The Board shall have the power and duty to:

(1) Administer this Chapter.

(2) Adopt, amend, or repeal rules necessary to carry out the provisions of this Chapter, subject to the provisions of Chapter 150B of the General Statutes.

(3) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.
(4) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.
(5) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Chapter.
(6) Set fees as authorized in G.S. 90D-10.
(7) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.
(8) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.
(9) Keep on file in its office at all times a complete record of the names, addresses, license numbers, and renewal license numbers of all persons entitled to practice under this Chapter.
(10) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.
(11) Adopt rules for continuing education requirements.

"**§ 90D-7. Requirements for licensure.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be licensed as an interpreter or transliterator if the applicant meets all of the following qualifications:

(1) Is 18 years of age or older.
(2) Is of good moral character as determined by the Board.
(3) Meets one of the following criteria:
a. Holds a valid National Association of the Deaf (NAD), level 4 or 5 certification.
b. Is nationally certified by the Registry of Interpreters for the Deaf, Inc., (RID).
c. Has a national certification recognized by the National Cued Speech Association (NCSA).
d. Holds a quality assurance North Carolina Interpreter Classification System (NCICS) level A or B classification in effect on January 1, 2000.

(b) Effective July 1, 2008, any person who applies for initial licensure as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution.

"**§ 90D-8. Provisional license.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be issued a one-time provisional license as an interpreter or transliterator if the applicant 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) Completes two continuing education units approved by the Board. These units must be completed for each renewable year.
(4) Satisfies one of the following:
a. Holds a quality assurance North Carolina Interpreter Classification System (NCICS) level C classification.
b. Holds a valid National Association of the Deaf (NAD) level 2 or 3 certification.
c. Holds a current Educational Interpreter Performance Assessment (EIPA) level 3 or above classification.
d. Holds the following certificates for cued language transliterating coursework: Educational Interpreting Defined, Cued Language Transliterator (CLT) Skill Development I, II, and III, and Ethical Decision Making I.
e. Holds at least a two-year interpreting degree from a regionally accredited institution.

(b) A provisional license issued under this section shall be valid for one year. Upon expiration, a provisional license may be renewed for an additional one-year period in the discretion of the Board. However, a provisional license shall not be renewed more than three times. The Board may, in its discretion, grant an extension after the third time the provisional license has been renewed under circumstances to be established in rules adopted by the Board.

(c) Effective July 1, 2008, any person who applies for initial licensure on a provisional basis as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution.

"**§ 90D-9. Reciprocity; licensure of nonresident.**

(a) The Board may issue a license to a qualified applicant who resides in this State and holds an interpreter or transliterator license in another state if that state has standards of competency that are substantially equivalent to those provided in this Chapter.

(b) The Board may issue a license to a nonresident if the person meets the requirements of this Chapter or the person resides in a state that recognizes licenses issued by the Board.

"**§ 90D-10. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees not to exceed the amounts listed below:

(1)	License	$225.00
(2)	Provisional license	$225.00

(3)	License renewal	$150.00
(4)	Provisional license renewal	$150.00
(5)	Duplicate license	$10.00.

"**§ 90D-11. License renewal.**

Each license issued under this Chapter shall be renewed on or before October 1 of each year. All applications for renewal shall be filed with the Board and shall be accompanied by the renewal fee as required by G.S. 90D-10 and written proof of satisfactory completion of continuing education requirements adopted by the Board. Licenses that are not renewed shall automatically lapse, and the licensee shall be required to reapply for licensure in accordance with rules adopted by the Board.

"**§ 90D-12. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license an interpreter or transliterator or applicant for any of the following:

(1) Giving false information to or withholding information from the Board in procuring or attempting to procure a license.

(2) Having been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to perform interpreter or transliterator services or that indicates the person has deceived or defrauded the public.

(3) Having been disciplined by the Registry of Interpreters for the Deaf, Inc., (RID).

(4) Demonstrating gross negligence, incompetency, or misconduct in performing interpreter or transliterator services.

(5) Failing to pay child support after having been ordered to do so by a court of competent jurisdiction.

(6) Willfully violating any provisions of this Chapter or rules adopted by the Board.

"**§ 90D-13. Injunctive relief.**

If the Board finds that a person who does not have a license issued under this Chapter claims to be a licensed interpreter or transliterator or is engaging in practice as an interpreter or transliterator in violation of this Chapter, the Board may apply in its own name to the superior court for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The action may be brought in the county where the illegal or unlawful acts are alleged to have been committed, in the county where the defendant resides, or in the county where the Board maintains its offices and records. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation."

SECTION 2. G.S. 8B-1 reads as rewritten:

"**§ 8B-1. Definitions; right to interpreter; determination of competence.**

As used in this Chapter:

(1) "Appointing authority" means the presiding judge or clerk of superior court in a judicial proceeding, or a hearing officer, examiner,

commissioner, chairman, presiding officer or similar official in a legislative or administrative proceeding.

(2) "Deaf person" means a person whose hearing impairment is so significant that the individual is impaired in processing linguistic information through hearing, with or without amplification.

(3) "Qualified interpreter" means an interpreter ~~certified as qualified under standards and procedures promulgated by the Department of Health and Human Services. If the appointing authority finds that an interpreter possessing these qualifications is not available, an interpreter without these qualifications may be called and used as a qualified interpreter if the interpreter's actual qualifications have otherwise been determined to be adequate for the present need.~~ licensed under Chapter 90D of the General Statutes. If the appointing authority finds that a licensed interpreter is not available, an unlicensed interpreter may be called and used as a qualified interpreter if the interpreter's actual qualifications have otherwise been determined to be adequate for the present need. In no event will an interpreter be considered qualified if the interpreter is unable to communicate effectively with and simultaneously and accurately interpret for the deaf person.

A deaf person who does not utilize sign language may request an aural/oral interpreter. Before this interpreter is appointed, the appointing authority shall satisfy itself that the aural/oral interpreter is competent to interpret the proceedings to the deaf person and to present the testimony, statements, and any other information tendered by the deaf person."

SECTION 3. G.S. 8B-6 reads as rewritten:

"**§ 8B-6. List of interpreters; coordination of interpreter services.**

The Department of Health and Human Services shall prepare and maintain an up-to-date list of qualified and available interpreters. A copy of the list shall be provided to each clerk of superior ~~court.~~court and to the North Carolina Interpreter and Transliterator Licensing Board created in Chapter 90D of the General Statutes. When requested by an appointing authority to provide an interpreter the Division of Services for the Deaf and the Hard of Hearing shall assist in arranging for an interpreter at the time and place needed through its program of community services for the hearing impaired."

SECTION 4. G.S. 8B-10 reads as rewritten:

"**§ 8B-10. North Carolina ~~Interpreter Classification System application and assessment fee.~~Training and Licensing Preparation Program fees.**

The Division of Services for the Deaf and the Hard of Hearing of the Department of Health and Human Services may charge ~~an applicant for participation in the North Carolina Interpreter Classification System Program a fee of fifty dollars ($50.00). Ten dollars ($10.00) of this fee is an application fee and forty dollars ($40.00) of this fee is~~

~~an assessment fee to cover the cost of administering the Program. The fee is payable when an applicant applies for participation in the Program.~~a fee of no more than fifty dollars ($50.00) to individuals who participate in interpreter training or workshops offered by the North Carolina Training and Licensing Preparation Program. The Division may charge a fee of no more than one hundred dollars ($100.00) for a diagnostic evaluation offered under the Program. This fee is for voluntary diagnostic services only. These fees are to cover the cost of administering the Program and are payable when a participant takes part in a planned activity."

SECTION 5. G.S. 143B-216.33(a) reads as rewritten:

"(a) There is hereby created within the Department of Health and Human Services, the Division of Services for the Deaf and the Hard of Hearing. The Division shall have the powers and duties including the following:

(1) To review existing programs for persons who are deaf or hard of hearing in the State, and make recommendations to the Secretary of the Department of Health and Human Services and to the Superintendent of the Department of Public Instruction for improvements to such programs;

(2) Repealed by Session Laws 1999-237, s. 11.4(b).

(3) To provide a network of resource centers for local access to services such as interpreters, information and referral, telephone relay, and advocacy for persons who are deaf or hard of hearing;

(4) To collect, study, maintain, publish and disseminate information relative to all aspects of deafness;

(5) To promote public awareness of the needs of, resources and opportunities available to persons who are deaf or hard of hearing;

(6) To provide technical assistance to agencies and organizations in the development of services to persons who are deaf or hard of hearing;

(7) To administer the Telecommunications Program for the Deaf pursuant to G.S. 143B-216.34; and

(8) To ~~establish training and evaluation standards for determination of competency of individuals serving as interpreters for persons who are deaf or hard of hearing.~~provide training and skill development programming to enhance the competence of individuals who aspire to be licensed or who are currently licensed as interpreters or transliterators under Chapter 90D of the General Statutes."

SECTION 6. G.S. 115C-110 is amended by adding a new subsection to read:

"(n) Each interpreter or transliterator employed by a local educational agency, to provide services to hearing-impaired students, must annually complete 15 hours of job-related training that has been approved by the local educational agency."

SECTION 7. A person practicing interpreter or transliterator services on the effective date of this act who submits the following evidence to the Board and pays the required fee within 18 months of the effective date of this act, shall be licensed without

having to satisfy the requirements of subdivision (a)(3) of G.S. 90D-7 as enacted in Section 1 of this act:

(1) Evidence that the person meets the qualifications in subdivisions (a)(1) and (a)(2) of G.S. 90D-7.

(2) Evidence that the person has been actively engaged as an interpreter or transliterator in this State for at least 200 hours for each of the two years immediately preceding the effective date of this act. The evidence must be verified in writing by sources approved by the Board.

(3) Two letters of recommendation from sources approved by the Board.

(4) A fee of seventy-five dollars ($75.00) for the registration. This fee shall be in lieu of the fee for a license authorized in G.S. 90D-10 of the act.

A person who obtains a license by meeting the requirements of this section must comply with the continuing education requirements set by the Board. Any practicing person who does not register with the Board within 18 months of the effective date of this act shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 90D, enacted by Section 1 of this act.

SECTION 8. The Department of Public Instruction must provide the Board with a copy of the State Board of Education's approved educational requirements and standards for interpreters and transliterators employed by the local educational agencies, who provide support services for hearing-impaired students.

SECTION 9. Notwithstanding the language in G.S. 90D-5, as enacted in Section 1 of this act, the initial Board members who are required to be licensed under that section, must only have satisfied the requirements for licensure in G.S. 90D-7(a)(1) and (3) of this act.

SECTION 10. G.S. 90D-5 and G.S. 90D-6, as enacted in Section 1 of this act, and Sections 7, 8, 9, and 10 of this act are effective when the act becomes law. The remainder of the act becomes effective July 1, 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1313
PROPOSED COMMITTEE SUBSTITUTE H1313-CSLAf-42 [v.35]

8/28/2002 8:14:29 PM

Short Title: Interpreter/Transliterator Licensure. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT FOR PERSONS WHO ARE DEAF OR HARD OF HEARING AND TO MAKE CONFORMING CHANGES TO CHAPTER 8B AND CHAPTER 143B.

THE GENERAL ASSEMBLY OF NORTH CAROLINA ENACTS:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 90D.

"Interpreters and Transliterators.

"**§ 90D-1. Title.**

This Chapter may be cited as the 'Interpreter and Transliterator Licensure Act'.

"**§ 90D-2. Declaration of purpose.**

The practice of manual or oral interpreting and transliterating services affects the public health, safety, and welfare, and therefore the licensure of these practices is necessary to ensure minimum standards of competency and to provide the public with safe and accurate manual or oral interpreting or transliterating services. It is the purpose of this Chapter to provide for the regulation of persons offering manual or oral interpreting or transliterating services to individuals who are deaf, hard of hearing, or dependent on the use of manual modes of communication in this State.

"**§ 90D-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Interpreter and Transliterator Licensing Board.

(2) Cued speech. – A tool that utilizes a phonetically based system to enable spoken language to appear visibly through the use of eight

handshapes in four locations in combination with natural mouth movements to allow sounds of spoken language to appear differently.

(3) Educational interpreter or transliterator. – A person who provides accessible communication, using the most understandable language model, to individuals in prekindergarten through grade 12 or in any institution of higher education.

(4) Interpreter. – A person who practices the act of interpreting as defined in this section.

(5) Interpreting. – The process of providing accessible communication, between and among persons who are deaf or hard of hearing and those who are hearing. This process includes, but is not limited to, communication between American Sign Language and English. It may also involve various other modalities that involve visual, gestural, and tactile methods.

(6) License. – A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90D-7 entitling the person to perform the functions and duties of an interpreter or transliterator.

(7) Provisional license. – A certificate issued by the Board under G.S. 90D-8 enabling a person to perform the functions and duties of an interpreter or transliterator until the person has successfully completed all of the requirements set forth in G.S. 90D-7.

(8) Transliterating. – The process of providing accessible communication between one or more hearing persons and one or more deaf or hard of hearing persons using a form of manually coded English.

(9) Transliterator. – A person who practices the act of transliterating as defined in this section.

"**§ 90D-4. License required; exemptions.**

(a) Except as provided in Chapter 8B of the General Statutes, no person shall practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title 'Licensed Interpreter for the Deaf', 'Licensed Transliterator for the Deaf', or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator unless that person is currently licensed under this Chapter.

(b) The provisions of this Chapter do not apply to:

(1) Persons providing interpreting or transliterating services in religious proceedings.

(2) Persons providing interpreting or transliterating services in mentoring or training programs approved by the Board.

(3) An intern under the supervision of a person licensed under this Chapter to provide interpreting or transliterating services.

(4) Persons providing interpreting or transliterating services in an emergency situation until a licensed interpreter or transliterator can be

obtained. An emergency situation is one where the deaf or hard of hearing person is in substantial danger of death or irreparable harm if interpreting or transliterating services are not provided immediately.

(5) Educational interpreters or transliterators.

"**§ 90D-5. Creation of the Board.**

(a) The North Carolina Interpreter and Transliterator Licensing Board is created.

(b) Composition and Terms. – The Board shall consist of nine members who shall serve staggered terms. The initial Board members shall be selected on or before January 1, 2003, as follows:

(1) A member of the North Carolina Association of the Deaf (NCAD) who is deaf and familiar with the interpreting process. This member shall be appointed by the Governor and serve for a term of two years.

(2) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc. (NCRID) with five years experience in a community setting and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the Governor and serve for a term of three years.

(3) An employee of the North Carolina Department of Health and Human Services. This member shall be appointed by the Governor, upon recommendation of the Secretary of the Department, and serve a term of three years.

(4) An interpreter or transliterator for deaf-blind individuals who is licensed to practice as an interpreter or transliterator under this Chapter or a deaf-blind individual who is a member of the North Carolina Deaf-Blind Association and who has knowledge of the interpreting process. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years.

(5) A cued speech or oral transliterator licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of two years.

(6) A member of Self Help for Hard of Hearing (SHHH) with knowledge of the interpreting process and deafness. This member shall be appointed by the General Assembly, upon recommendation of the President Pro Tempore of the Senate, and serve for a term of three years

(7) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc. (NCRID) with five years experience in an educational setting in grades K-12 and who is licensed to practice as an interpreter or transliterator under this Chapter. This member shall be appointed by the General Assembly, upon recommendation of the

Speaker of the House of Representatives, and serve for a term of two years.

(8) A faculty member of an Interpreter Training Program (ITP), an Interpreter Preparation Program (IPP), or a qualified or professional certified instructor of the American Sign Language Teachers Association (ASLTA). This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve for a term of two years.

(9) A public member. This member shall be appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives, and serve a term of two years. For purposes of this section, a public member shall not be licensed under this Chapter or have an immediate family member who is deaf or hard of hearing.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms.

(c) Qualifications. – All members of the Board who are required to be licensed under this Chapter shall reside or be employed in North Carolina and shall remain in active practice and in good standing with the Board as a licensee during their terms.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. – The officers of the Board shall be a chair, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected by the Board for two-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. – The Board shall hold at least two meetings each year to conduct business. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

"**§ 90D-6. Powers of the Board.**

The Board shall have the power and duty to:

(1) Administer this Chapter.

(2) Adopt, amend, or repeal rules necessary to carry out the provisions of this Chapter, subject to the provisions of Chapter 150B of the General Statutes.

(3) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(4) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(5) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Chapter.

(6) Set fees as authorized in G.S. 90D-10.

(7) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.

(8) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.

(9) Keep on file in its office at all times a complete record of the names, addresses, license numbers, and renewal license numbers of all persons entitled to practice under this Chapter.

(10) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.

(11) Adopt rules for continuing education requirements.

"**§ 90D-7. Requirements for licensure.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be licensed as an interpreter or transliterator if the applicant meets all of the following qualifications:

(1) Is 18 years of age or older.

(2) Is of good moral character as determined by the Board.

(3) Meets one of the following criteria:

a. Holds a valid National Association of the Deaf (NAD), level 4 or 5 certification.

b. Is nationally certified by the Registry of Interpreters for the Deaf, Inc. (RID).

c. Has a national certification recognized by the National Cued Speech Association (NCSA).

d. Holds a quality assurance North Carolina Interpreter Classification (NCICS) level A or B classification in effect on January 1, 2000.

(b) Effective July 1, 2008, any person who applies for initial licensure as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution.

"**§ 90D-8. Provisional license.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be issued a one-time provisional license as an interpreter or transliterator if the applicant 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) Completes two continuing education units approved by the Board. These units must be completed for each renewable year.
(4) Satisfies one of the following:
a. Holds a quality assurance North Carolina Interpreter Classification System (NCICS) level C classification.
b. Holds a valid National Association of the Deaf (NAD) level 2 or 3 certification.
c. Holds a current Educational Interpreter Performance Assessment (EIPA) level 3 or above classification.
d. Holds the following certificates for cued language transliterating course work: Educational Interpreting Defined, Cued Language Transliterator (CLT) Skill Development I, II, and III and Ethical Decision Making I.
e. Holds at least a two-year interpreting degree from a regionally accredited institution.

(b) A provisional license issued under this section shall be valid for one year. Upon expiration, a provisional license may be renewed for an additional one-year period in the discretion of the Board. However, a provisional license shall not be renewed more than three times. The Board may, in its discretion, grant an extension after the third time the provisional license has been renewed under circumstances to be established in rules adopted by the Board.

(c) Effective July 1, 2008, any person who applies for initial licensure on a provisional basis as an interpreter or transliterator shall hold at least a two-year degree from a regionally accredited institution.

"**§ 90D-9. Reciprocity; licensure of nonresident.**

(a) The Board may issue a license to a qualified applicant who resides in this State and holds an interpreter or transliterator license in another state if that state has standards of competency that are substantially equivalent to those provided in this Chapter.

(b) The Board may issue a license to a nonresident if the person meets the requirements of this Chapter or the person resides in a state that recognizes licenses issued by the Board.

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(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

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Each license issued under this Chapter shall be renewed on or before October 1 of each year. All applications for renewal shall be filed with the Board and shall be accompanied by the renewal fee as required by G.S. 90D-10 and written proof of satisfactory completion of continuing education requirements adopted by the Board. Licenses that are not renewed shall automatically lapse, and the licensee shall be required to reapply for licensure in accordance with rules adopted by the Board.

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(3) Having been disciplined by the Registry of Interpreters for the Deaf, Inc. (RID).

(4) Demonstrating gross negligence, incompetency, or misconduct in performing interpreter or transliterator services.

(5) Failing to pay child support after having been ordered to do so by a court of competent jurisdiction.

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If the Board finds that a person who does not have a license issued under this Chapter claims to be a licensed interpreter or transliterator or is engaging in practice as an interpreter or transliterator in violation of this Chapter, the Board may apply in its own name to the superior court for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The action may be brought in the county where the illegal or unlawful acts are alleged to have been committed, in the county where the defendant resides, or in the county where the Board maintains its offices and records. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation."

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(2) Repealed by Session Laws 1999-237, s. 11.4(b).

(3) To provide a network of resource centers for local access to services such as interpreters, information and referral, telephone relay, and advocacy for persons who are deaf or hard of hearing;

(4) To collect, study, maintain, publish and disseminate information relative to all aspects of deafness;

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(1) Evidence that the person meets the qualifications in subdivisions (a)(1) and (a)(2) of G.S. 90D-7.

(2) Evidence that the person has been actively engaged as an interpreter or transliterator in this State for at least 200 hours for each of the two years immediately preceding the effective date of this act. The evidence must be verified in writing by sources approved by the Board.

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A person who obtains a license by meeting the requirements of this section must comply with the continuing education requirements set by the Board. Any practicing person who does not register with the Board within 18 months of the effective date of this act shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 90D, enacted by Section 1 of this act.

SECTION 8. The Department of Public Instruction must provide the Board with a copy of the State Board of Education's approved educational requirements and standards for interpreters and transliterators employed by the local educational agencies, who provide support services for hearing-impaired students.

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SECTION 10. G.S. 90D-5 and G.S. 90D-6, as enacted in Section 1 of this act, and Sections 7, 8, 9, and 10 of this act are effective when the act becomes law. The remainder of the act becomes effective July 1, 2003.

HOUSE BILL 1313:
Interpreter/Transliterator Licensure

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Alexander
Date:	August 29, 2002	**Analysis by:**	Martha Walston
Version:	H1313-CSLAf-42		Committee Counsel

SUMMARY: ***House Bill 1313 establishes a new chapter 90D that sets out the licensure requirements for persons practicing as an interpreter or transliterator for a fee or consideration or holding themselves out as licensed interpreters or transliterators. The Chapter will be administered by a 9-member board.***

CURRENT LAW: Under Chapter 8B of the General Statutes, a deaf person must be provided a qualified interpreter in judicial, legislative, or administrative proceedings. "Qualified interpreter" means an interpreter certified as qualified under standards and procedures promulgated by the Department of Health and Human Services (DHHS).

G.S. 143B-216.33 directs the Division of Services for the Deaf and the Hard of Hearing within the DHHS to establish training and evaluation standards for determination of competency of individuals serving as interpreters.

The rules adopted by the DHHS require that persons providing interpreter services through the Division of Services for the Deaf and the Hard of Hearing must hold a current certification by the National Registry of Interpreters for the Deaf or a current certification by a governmental agency in another State. If a person wishes to be qualified under Chapter 8B, the person must meet the following requirements for Status I or Status II:

- Status I - must hold certain valid and current certificates awarded by the National Registry of Interpreters for the Deaf or have been awarded certain classifications obtained through an assessment procedure offered by the North Carolina Registry of Interpreters for the Deaf.
- Status II - must show interpreting skills together with names of four persons who may serve as references (2 hearing impaired persons familiar with the applicant's qualifications and 2 persons who may be former employers, professionals in the area of interpreting, interpreter trainers or instructors, staff to the Division of Services for the Deaf and Hard of Hearing.)

Under the Americans with Disabilities Act, a qualified interpreter means "an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary."

BILL ANALYSIS: The following is a section-by-section analysis of the bill:

SECTION 1 of the bill sets out the sections of the new Chapter 90D Interpreters and Transliterators.

§90D-1 Title. The title of Chapter 90D is "'Interpreter and Transliterator Licensure Act".

§90D-2 Declaration of purpose This section states the purpose of the Act.

§90D-3 Definitions. This section defines, board, cued speech, educational interpreter or transliterator, interpreter, interpreting, license, provisional license, transliterating, and transliterator.

§90D-4 License required; exemptions. A license is required if the person practices or offers to practice as an interpreter or transliterator for a fee or other consideration, represents himself or herself as a licensed interpreter or transliterator, or uses the title. There are five exemptions from licensure. (See page 2, lines 35-43 and page 3, lines 1-4 of the bill).

§90D-5 Creation of the Board. The North Carolina Interpreter and Transliterator Licensing Board will consist of nine members who will serve staggered terms (3 appointed by Governor, 3 appointed by President Pro Tem, and 3 appointed by the Speaker). The initial Board members must be selected on or before January 1, 2003.

§90D-6 Powers of the Board. This section lists the powers and duty of the Board.

§90D-7 Requirements for licensure:

- Payment of fee not to exceed $225
- At least 18 years of age
- Of good moral character as determined by the Board
- Hold one of the following: a valid NAD level 4 or 5 certification, RID certification, national certification recognized by NCSA, quality assurance NCICS level A or B classification in effect on January 1, 2000.

Beginning July 1, 2008, a person applying for initial licensure must also hold at least a two-year degree from a regionally accredited institution.

§90D-8 Provisional license. The requirements for provisional license are:

- Payment of a fee not to exceed $225
- At least 18 years old
- Of good moral character as determined by the Board
- Completes 2 continuing education units approved by the Board
- Satisfies one of the following:
    1. Holds NCICS level C classification
    2. Holds a NAD level 2 or 3 certification
    3. Holds a current EIPA level 3 or above classification
    4. Holds the following certificates for cued language transliterating course work: Educational Interpreting Defined, CLT Skill Development I, II, and III and Ethical Decision Making I.
    5. Holds at least a two-year interpreting degree from a regionally accredited institution.

The provisional license is valid for one year, and renewable for an additional one-year period in the discretion of the Board (but not more than three times). Effective July 1, 2008, an applicant

for an initial provisional license must hold at least a two-year degree from a regionally accredited institution.

§90D-9 Reciprocity; licensure of nonresident. Allows reciprocity.

§90 D-10 Expenses and fees. This section sets out the expenses and fees of the Board. The expenses of the Board must be exclusively paid out of the following fees:

TYPE OF FEE	AMOUNT NOT TO EXCEED
License	$225
Provisional license	$225
License renewal	$150
Provisional license renewal	$150
Duplicate license	$ 10

§90D-11 License renewal. Each license issued by the Board must be renewed annually before October 1. Applications for renewal must be accompanied by the renewal fee and written proof of satisfactory completion of continuing education requirements.

§90D-12 Disciplinary Action. This section sets out the types of misconduct that authorizes the Board to deny, suspend, revoke or refuse to license.

§90D-13 Injunctive relief. The Board is authorized to enjoin an unlicensed person from claiming to be a licensed interpreter or practicing as an interpreter in violation of the Chapter.

SECTION 2 of the bill amends the definition of "qualified interpreter" in Chapter 8B to mean a person licensed under the new Chapter 90D. An unlicensed interpreter may be used, if the appointing authority finds that a licensed interpreter is unavailable. The unlicensed interpreter's actual qualifications must have been determined to be adequate for the present need.

SECTION 3 of the bill amends Chapter 8B by requiring the Department of Health and Human Services to provide a copy of an up-to-date list of qualified and available interpreters to the new Board. Current law requires DHHS to provide this list to each clerk of superior court.

SECTION 4 of the bill amends Chapter 8B by changing the name of the North Carolina Interpreter Classification System Program within the Division of Services for the Deaf and Hard of Hearing to the North Carolina Training and Licensing Preparation Program. The Program will offer interpreter training or workshops (for a fee not to exceed $50) and diagnostic evaluations (for a fee not to exceed $100). These fees will cover the cost of administration.

SECTION 5 of the bill amends the statute setting out the powers and duties of the Division of Services for the Deaf and the Hard of Hearing to conform with new Chapter 90D.

SECTION 6 of the bill amends the Article governing special education in Chapter 115C (Education) by requiring that each interpreter or transliterator employed by a local educational agency (to provide services to hearing impaired students), must annually complete 15 hours of

job-related training that has been approved by the local educational agency. A local educational agency includes the State Board of Education, each local board of education, and charter schools. A local educational agency also includes the Department of Health and Human Services, the Department of Juvenile Justice and Delinquency Prevention, and the Department of Correction when these departments are providing special education and related services.

SECTION 7 of the bill authorizes the Board to license a person who does not meet the requirements of §90D-7(a)(3) as long as the person meets the following qualifications:

- Is practicing interpreter or transliterator services on the effective date of the act
- Submits the following evidence to the Board within 18 months of the effective date of the act:

  The person is at least 18 years old.
  The person is of good moral character.
  The person has been actively engaged as an interpreter or transliterator in the State for at least 200 hours for each of the two years immediately preceding the effective date of the act.
  The person submits two letters of recommendation from sources approved by the Board.
  The person submits a $75 registration fee

A person obtaining a license under Section 5 of the bill must comply with the continuing education requirements.

SECTION 8 of the bill requires the Department of Public Instruction to provide the Board with a copy of the current standards and educational requirements for interpreters and transliterators employed by the local educational agencies.

SECTION 9 of the bill exempts the initial members of the Board from holding a license under the act. However, the initial members must satisfy the following requirements for licensure:

- Be at least 18 years of age
- Meet one of the following criteria:
  1. Holds a valid National Association of the Deaf (NAD), level 4 or 5 certification
  2. Is nationally certified by the Registry of Interpreters for the Deaf, Inc. (RID).
  3. Has a national certification recognized by the National Cued Speech Association (NCSA)
  4. Holds a quality assurance North Carolina Interpreter Classification (NCICS) level A or B classification in effect on January 1, 2000.

SECTION 10 of the bill sets out the effective dates. The statutes creating the Board and setting out the powers and duties of the Board in Chapter 90D are effective when the act becomes law. Sections 7, 8, 9, and 10 of the act are also effective when the act becomes law. The remainder of the act becomes effective July 1, 2003.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1313 (Second Edition)

SHORT TITLE: Interpreter/Transliterator Licensure

SPONSOR(S): Representative Alexander

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES:					
Licensing Board	$14,125	$33,625	$38,500	$41,500	$44,500
EXPENDITURES:					
Licensing Board	$14,103	$20,630	$22,880	$24,505	$25,906

See Assumptions and Methodology for Other Fiscal Impacts

POSITIONS:

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
State and Local Government

EFFECTIVE DATE: G.S. 90D-5 and G.S. 90D-6 as enacted in Section 1 of this act and Sections 7, 8, 9, and 10 of this act are effective when the act becomes law. The remainder of the act becomes effective July 1, 2003.

BILL SUMMARY: Adds new GS Ch. 90D as title indicates. Provides that no person shall practice as an interpreter or a transliterator (defined as process of receiving message in one language and delivering into manual form in the same language) unless licensed pursuant to act. Establishes the NC Interpreter and Transliterator Licensing Board to consist of nine members: three appointed by the Governor, three appointed by the General Assembly upon recommendation by the Speaker of the House of Representatives, and three appointed by the General Assembly upon recommendation by the President ProTempore of the Senate. Members to serve three year staggered terms. All Board members must be licensed pursuant to the act and employed in NC. The Board has the power to administer the act, adopt rules necessary to carry out purposes of the act, issue and revoke licenses, and maintain records. Sets out behavior that may result in Board denying, suspending, revoking, or refusing to issue the license for an interpreter or transliterator. Gives Board authority to seek injunctive relief against persons engaging in the unlicensed practice of interpreting and transliteration.

Licensure requires that applicant (1) be 18 or older, (2) be of good moral character as determined by the Board, and (3) be nationally certified by the National Association of the Deaf or by the Registry of Interpreters for the Deaf, Inc., or have a national certification recognized by the National Cued Speech Association or holds a quality assurance NC Interpreter Classification in effect on January 1, 2000. Licenses must be renewed annually. Allows provisional licenses for community interpreters or transliterators (defined as persons who provide services in a postsecondary or community setting). A provisional license is valid for one year and may be issued only up to four times per individual, unless extended by Board. Allows Board to set fee of $225 for a license, a provisional license, and for $150 for license renewal of either, and $10 for duplicate licenses. Exempts the following persons from licensure: persons providing interpreting and transliterating services in religious proceedings, mentoring and training programs approved by the Board, and emergency situations until a licensed interpreter is available. An intern under the supervision of a person licensed under this chapter is also exempted from licensure. All educational interpreters or transliterators are also exempted from licensure covering interpreters serving individuals in prekindergarten through grade 12 and in institutions of higher education. Allows persons presently practicing interpreter or transliterator services to register with the Board within eighteen months of effective date of act and pay a $75 registration fee to avoid complying with licensing provisions of act. Requires that after July 1, 2008, licenses will require that persons hold a four-year degree from an accredited institution. After July 1, 2008, persons seeking a provisional license as a community or educational interpreter must be a graduate of a two-year interpreter-training program or any four-year accredited degree institution.

ASSUMPTIONS AND METHODOLOGY:

A. Fiscal impact of the New Licensing Board

Per statute, the new board may begin to assess fees for an 18 month period beginning January 1, 2003 for individuals who are eligible for grandfather status per G.S. 90D-7 (Section 7), and individuals who will apply as new licensees beginning July 1, 2003. The board plans to operate budgetarily on a fiscal year basis of October – September to coincide with the annual renewal of licenses, which occurs in October. Therefore, for the first year it is anticipated that 150 individuals will be grand fathered at a fee of $75 between January and September 2003; and 50 individuals will be new licensees assessed a prorated fee of $37.50 for the period July-September 2003. Additionally, the board anticipated revenue from verifications ($500) and the mail list ($500). The total projected revenue for the first year January-September 2003 is $14,125. Estimated expenses are $14,103 and include the following: $3,200 for board member per diem and travel; $500 for the annual audit; $900 for legal-rule-making; $563 for equipment; $4,500 for contractual services, i.e. the cost for the agency that will handle administrative responsibilities for the board; $1,440 for office supplies, website maintenance, telephone and bank charges; $2,000 for an Interpreter; and $1,000 for miscellaneous expenses Therefore, revenue minus expenses provides a balance or net income of $23 that may be used for unanticipated

expenses. In subsequent years the board anticipates that new licensees will have a steady increase of 5-10 per year, individuals on provisional status will maintain a range of 30-60 each year, and renewals will number about 325 per year. Therefore, in the second through fifth years revenue is projected to increase on an average $40,000 and expenses on the same basis by $23,000. If this occurs the board would achieve a balance or net income annually of approximately $16,000.

B. Other Fiscal Impacts on State and Local Government

Under Chapter 8B of the General Statutes, a deaf person must be provided with an interpreter in judicial, legislative, or administrative proceedings. In addition, the Americans with Disabilities Act (ADA) requires that interpreter services be provided to deaf persons who receive services from state and local governmental agencies and community colleges. These requirements cause state and local governments to purchase interpreting and transliterator services to meet the needs of their deaf clients. If the licensure of interpreters and transliterators causes the hourly rate for interpreting and transliterator services to increase beyond the usual inflationary increases, than expenditures for purchase of interpreting and transliterator services by state and local governments may increase.

Since the impact of licensure on the hourly rates for interpreting and transliterator services is unknown, this fiscal note will estimate the increased expenditures resulting from a $1 increase in the average annual hourly rate for interpreting and transliterator services.

In order to determine the number of hours of interpreting and transliterator services purchased by state and local government, the nine interpreter service agencies were contacted and asked how many services hours they billed to state and local governmental agencies. Seven of the agencies responded to the information request. Four of the seven agencies were able to identify the number of hours they had billed state and local governmental agencies in calendar 2001. The remaining three agencies replied that they did not keep records on the number of hours billed in past years or they rarely contracted with government agencies.

The agencies responding to the information request identified 12,456 hours billed to state and local government agencies. Since the agencies that were able to provide data are the larger agencies, this fiscal note assumes that they represent 80% of the hours purchased by state and local governmental agencies. Assuming that the agencies unable to provide data and independent interpreters not connected to an agency bill the additional 20% of service hours, then the estimated number of hours billed to state and local governmental agencies in calendar year 2001 was 15,570.

The Division of Vocational Rehabilitation purchases interpreting services for hearing impaired individuals who are receiving rehabilitation services and it usually uses independent interpreters who are not employed by the agencies. This fiscal note estimates that the Division of Vocational Rehabilitation purchases 36,000 hours

of interpreting services per year for its hearing impaired clients. This estimate is base on annual expenditures of about $900,000 per year with an average cost per hour of $25. Most of the interpreting services purchased by the Division of Vocational Rehabilitation are for hearing impaired individuals who are attending institutions of higher education. Since interpreters in education settings are exempted from licensure, this fiscal note assumes that 10% of the hours purchased by the Division of Vocational Rehabilitation or 3,600 hours are not at an institution of higher education and will require licensed interpreter.

Estimated number of interpreting service hours purchased in SFY 2002 = 18,670

State Fiscal Year	Number of Services Hours	Cost if Hourly Rates Increase by $1
2001-02	18,670	No Impact
2002-03	19,603	No Impact
2003-04	20,584	$20,584
2004-05	21,613	$21,613
2005-06	22,694	$22,694
2006-07	23,828	$23,828

Note: This chart assumes that the number of hours of interpreting services purchased will increase 5% per year.

SOURCES OF DATA:
Department of Health and Human Services
Division of Services for the Deaf and Hard-of-Hearing
Division of Vocational Rehabilitation
Providers of interpreting and transliterator services

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Michele Nelson and Carol Shaw

APPROVED BY: James D. Johnson

DATE: August 29, 2002

HOUSE BILL 1313

Short Title:	Interpreter/Transliterator Licensure.	(Public)
Sponsors:	Representative Alexander.	
Referred to:	Finance.	

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE INTERPRETER AND TRANSLITERATOR LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 90D.

"Interpreters and Transliterators.

"**§ 90D-1. Title.**

This Chapter may be cited as the 'Interpreter and Transliterator Licensure Act'.

"**§ 90D-2. Declaration of purpose.**

The practice of manual or oral interpreting and transliterating services affects the public health, safety, and welfare, and therefore the licensure of these practices is necessary to ensure minimum standards of competency and to provide the public with safe and accurate manual or oral interpreting or transliterating services. It is the purpose of this Chapter to provide for the regulation of persons offering manual or oral interpreting or transliterating services to individuals who are deaf, hard of hearing, or dependent on the use of manual modes of communication in this State.

"**§ 90D-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. – The North Carolina Interpreter and Transliterator Licensing Board.

(2) Community interpreter or transliterator. – A person who provides accessible communication for individuals in a postsecondary education or community setting using the language model most understandable to the individuals.

(3) Cued speech. – A tool that utilizes a phonetically based system to enable spoken language to appear visibly through the use of eight

handshapes in four locations in combination with natural mouth movements to allow sounds of spoken language to appear differently.

(4) Educational interpreter or transliterator. – A person who provides accessible communication for individuals in prekindergarten through grade 12 using the language model most understandable to the individuals.

(5) Hearing consumer. – A person or agency that requires the services of an interpreter or transliterator to effectively communicate and comprehend signed discourse.

(6) Interpreter. – A person who practices the act of interpreting as defined in this section.

(7) Interpreting. – The process of providing accessible communication, orally or manually, involving receiving a message in one language and delivering the message in another language.

(8) License. – A certificate that evidences approval by the Board that a person has successfully completed the requirements set forth in G.S. 90D-7 entitling the person to perform the functions and duties of an interpreter or transliterator.

(9) Provisional license. – A certificate issued by the Board pursuant to G.S. 90D-8 enabling a person to perform the functions and duties of an interpreter or transliterator until the person has successfully completed all of the requirements set forth in G.S. 90D-7.

(10) Transliterating. – The process of providing accessible communication by use of two different modes of the same language involving receiving a message in one language and delivering the language into a manual form of the same language.

(11) Transliterator. – A person who practices the act of transliterating as defined in this section.

"**§ 90D-4. License required; exemptions.**

(a) No person shall practice or offer to practice as an interpreter or transliterator, represent himself or herself as an interpreter or transliterator, or use the title 'Interpreter for the Deaf', 'Transliterator for the Deaf', or any other title or abbreviation to indicate that the person is an interpreter or transliterator unless that person is currently licensed as provided by this Chapter.

(b) The provisions of this Chapter do not apply to:

(1) Persons providing interpreting or transliterating services in religious proceedings.

(2) Persons providing interpreting or transliterating services in mentoring or training programs.

(3) An intern under the supervision of a person licensed under this Chapter to provide interpreting or transliterating services.

(4) Persons providing interpreting or transliterating services in an emergency situation until a licensed interpreter or transliterator can be obtained.

"**§ 90D-5. Creation of the Board.**

(a) The North Carolina Interpreter and Transliterator Licensing Board is created.

(b) Composition and Terms. – The Board shall consist of seven members who shall serve staggered terms. The Governor shall appoint the members of the Board.

The initial Board members shall be selected on or before August 1, 2001, as follows:

(1) A member of the North Carolina Association of the Deaf (NCAD) who is deaf and familiar with the interpreting process. This member shall serve for a term of two years.

(2) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc. (NCRID) with five years experience in a community setting and who is licensed to practice as an interpreter or transliterator pursuant to the provisions of this Chapter. This member shall serve for a term of three years.

(3) An interpreter who is a member of the North Carolina Registry of Interpreters for the Deaf, Inc. (NCRID) with five years experience in an educational setting in grades K-12 and who is licensed to practice as an interpreter or transliterator pursuant to the provisions of this Chapter. This member shall serve for a term of two years.

(4) An interpreter or transliterator for deaf-blind individuals who is licensed to practice as an interpreter or transliterator pursuant to the provisions of this Chapter or a deaf-blind individual with knowledge of the interpreting process. This member shall serve for a term of three years.

(5) A cued speech or oral transliterator licensed to practice as an interpreter or transliterator pursuant to the provisions of this Chapter. This member shall serve for a term of two years.

(6) A hearing consumer or person who is hard of hearing and a member of Self Help for Hard of Hearing (SHHH) with knowledge of the interpreting process and deafness. This member shall serve for a term of three years.

(7) A faculty member of an Interpreter Training Program (ITP) or Interpreter Preparation Program (IPP) or an instructor of the American Sign Language Teachers Association (ASLTA). This member shall serve for a term of two years.

Upon the expiration of the terms of the initial Board members, each member shall be appointed for a term of three years and shall serve until a successor is appointed and qualified. No member may serve more than two consecutive full terms.

(c) Qualifications. – All members of the Board required to be licensed under the provisions of this Chapter shall reside or be employed in North Carolina and shall remain in active practice and in good standing with the Board as a licensee during their terms.

(d) Vacancies. – A vacancy shall be filled in the same manner as the original appointment. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Removal. – The Board may remove any of its members for neglect of duty, incompetence, or unprofessional conduct. A member subject to disciplinary proceedings as a licensee shall be disqualified from participating in the official business of the Board until the charges have been resolved.

(f) Compensation. – Each member of the Board shall receive per diem and reimbursement for travel and subsistence as provided in G.S. 93B-5.

(g) Officers. – The officers of the Board shall be a chair, a vice-chair, and other officers deemed necessary by the Board to carry out the purposes of this Chapter. All officers shall be elected by the Board for two-year terms and shall serve until their successors are elected and qualified.

(h) Meetings. – The Board shall hold at least two meetings each year to conduct business. The Board shall establish procedures governing the calling, holding, and conducting of regular and special meetings. A majority of the Board shall constitute a quorum.

"**§ 90D-6. Powers of the Board.**

The Board shall have the power and duty to:

(1) Administer this Chapter.

(2) Adopt, amend, or repeal rules necessary to carry out the provisions of this Chapter.

(3) Employ and fix the compensation of personnel that the Board determines is necessary to carry into effect the provisions of this Chapter and to incur other expenses necessary to effectuate this Chapter.

(4) Examine and determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(5) Issue, renew, deny, suspend, or revoke licenses and carry out any disciplinary actions authorized by this Chapter.

(6) Set fees for licensure, licensure renewal, and other services deemed necessary to carry out the purposes of this Chapter.

(7) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining licensees exist.

(8) Maintain a record of all proceedings and make available to licensees and other concerned parties an annual report of all Board action.

(9) Maintain a list of the names and addresses of all persons licensed by the Board.

(10) Adopt a seal containing the name of the Board for use on all licenses and official reports issued by the Board.

"**§ 90D-7. Requirements for licensure.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be licensed as an interpreter or transliterator if the applicant meets all of the following qualifications:

(1) Is 18 years of age or older.

(2) Is of good moral character as determined by the Board.

(3) Meets one of the following criteria:

a. Is nationally certified by the National Association of the Deaf (NAD).
b. Is nationally certified by the Registry of Interpreters for the Deaf, Inc. (RID).
c. Has a national certification recognized by the National Cued Speech Association (NCSA).

(b) An applicant may be licensed as a legal interpreter or transliterator if, in addition to meeting the requirements of subdivisions (a)(1) and (a)(2) of this section, the applicant has successfully completed the Registry of Interpreters for the Deaf, Inc. (RID), Skill Certification: Legal (SC: L) requirements.

"**§ 90D-8. Provisional license.**

(a) Upon application to the Board and the payment of the required fees, an applicant may be issued a provisional license as a community interpreter or transliterator if the applicant 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) Satisfies one of the following:
a. Has a quality assurance North Carolina Interpreter Classification System (NCICS) level A or B classification or holds an interpreter classification from any other state that is substantially equivalent to the classification levels offered in this State.
b. Holds a valid National Association of the Deaf (NAD) level 3 or 4 certification.

(b) Upon application to the Board and the payment of the required fees, an applicant may be issued a provisional license as an educational interpreter or transliterator if, in addition to meeting the requirements of subdivisions (a)(1) and (a)(2) of this section, the applicant satisfies one of the following criteria:

(1) Has a current Educational Interpreter Performance Assessment (EIPA) evaluation, level 3 or higher.
(2) Has a quality assurance North Carolina Interpreter Classification System (NCICS) level A or B classification or holds an interpreter classification from any other state that is substantially equivalent to the classification levels offered in this State.
(3) Holds a valid National Association of the Deaf (NAD) level 3 or 4 certification.
(4) Holds a valid cued speech certification.

(c) Upon application to the Board and the payment of the required fees, an applicant may be issued a provisional license as a legal interpreter or transliterator if the applicant meets the requirements of subdivision (a)(2) of this section and satisfies two of the following criteria:

(1) Has successfully passed the Registry of Interpreters for the Deaf, Inc. (RID), Skill Certification: Legal (SC: L) written examination.
(2) Holds any national certification as described under this section.

(3) Has successfully completed 150 hours of work experience or training in a legal setting.

(d) A provisional license issued pursuant to this section shall be valid for one year. Upon expiration, a provisional license may be renewed for an additional one-year period in the discretion of the Board. However, a provisional license shall not be renewed more than four times. The Board may, in its discretion, grant an extension after the fourth time the provisional license has been renewed under circumstances to be established in rules adopted by the Board.

"**§ 90D-9. Reciprocity; licensure of nonresident.**

(a) The Board may issue a license to a qualified applicant who resides in this State and holds an interpreter or transliterator license in another state if that state has standards of competency that are substantially equivalent to those provided in this Chapter.

(b) The Board may issue a license to a nonresident if the person meets the requirements of this Chapter or the person resides in a state that recognizes licenses issued by the Board.

"**§ 90D-10. Expenses and fees.**

(a) All salaries, compensation, and expenses incurred or allowed for the purposes of this Chapter shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Chapter or from funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the General Fund.

(b) The Board may impose the following fees not to exceed the amounts listed below:

(1)	License fee	$225.00
(2)	Provisional license	$225.00
(3)	License renewal	$225.00
(4)	Provisional license renewal	$225.00
(5)	Duplicate license	$10.00.

"**§ 90D-11. License renewal.**

Each license issued under this Chapter shall be renewed on or before October 1 of each year. All applications for renewal shall be filed with the Board and shall be accompanied by the renewal fee as required by G.S. 90D-10 and proof of current certification from the Registry of Interpreters for the Deaf, Inc. (RID), the National Association of the Deaf (NAD), or the National Cued Speech Association (NCSA). Licenses that are not renewed shall automatically lapse, and the licensee shall be required to reapply for licensure in accordance with rules adopted by the Board.

"**§ 90D-12. Disciplinary action.**

The Board may deny, suspend, revoke, or refuse to license an interpreter or transliterator or applicant for any of the following:

(1) Giving false information to or withholding information from the Board in procuring or attempting to procure a license.

(2) Having been convicted of or pled guilty or no contest to a crime that indicates the person is unfit or incompetent to perform interpreter or

transliterator services or that indicates the person has deceived or defrauded the public.

(3) Having been disciplined by the Registry of Interpreters for the Deaf, Inc. (RID).

(4) Demonstrating gross negligence, incompetency, or misconduct in performing interpreter or transliterator services.

(5) Failing to pay child support after having been ordered to do so by a court of competent jurisdiction.

(6) Willfully violating any provisions of this Chapter or rules adopted by the Board.

"**§ 90D-13. Penalties.**

A person who does not have a license issued under this Chapter who either claims to be an interpreter or transliterator, engages in practice as an interpreter or transliterator, or uses any title or abbreviation that would indicate the person is an interpreter or transliterator in violation of this Chapter is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense.

"**§ 90D-14. Injunctive relief.**

If the Board finds that a person who does not have a license issued under this Chapter claims to be an interpreter or transliterator or is engaging in practice as an interpreter or transliterator in violation of this Chapter, the Board may apply in its own name to the superior court for a temporary restraining order or other injunctive relief to prevent the person from continuing illegal practices. The action may be brought in the county where the illegal or unlawful acts are alleged to have been committed, in the county where the defendant resides, or in the county where the Board maintains its offices and records. The court may grant injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of a violation."

SECTION 2.(a) All persons currently practicing interpreter or transliterator services on the effective date of this act shall register with the Board by submitting proof to the Board that he or she has been actively engaged as an interpreter or transliterator in this State on a regular basis prior to the effective date of this act and shall pay a fee of fifty dollars ($50.00) for the registration. Any person who does not register with the Board within two years of the effective date of this act shall be required to complete all requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 90D, enacted by Section 1 of this act.

SECTION 2.(b) On or after July 1, 2008, any person who desires to be licensed as an interpreter or transliterator under Chapter 90D of the General Statutes shall satisfy the requirements of G.S. 90D-7(a) and hold a four-year degree from an accredited institution.

SECTION 2.(c) On or after July 1, 2008, any person who desires to be licensed on a provisional basis as a community interpreter or transliterator or an educational interpreter or transliterator under Chapter 90D of the General Statutes shall satisfy the requirements of G.S. 90D-8(a) or G.S. 90D-8(b) and be a graduate of a two-year interpreter training program or any accredited four-year degree institution.

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

House Committee on Finance

Minutes
September 5, 2002

The House Committee on Finance met on Thursday, September 5, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, Luebke, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Cox, Decker, Eddins, Edwards, Gibson, Gray, Hackney, Holliman, Hurley, Johnson, McCombs, McMahan, Morris, Pope, Rayfield, Starnes, Willingham, Wilson, Womble, Baddour, Cunningham, and Earle. Also present were Sergeant-at-Arms staff Dusty Rhoades, Bob Fowler, Walter Spell, and Bill Freeman. Staff persons present included Cindy Avrette, Trina Griffin, Martha Walston, Richard Bostic, David Crotts, Linda Millsaps, and Martha Harris; and Committee Assistants Nancy Brantley, Blinda Edwards, Joyce Harris and Glenda Jones.

Chairman Allen opened the meeting and welcomed Triston Hooks, David Sullivan and Joe Sullivan from Wayne County and Ryan Roberson from Wilson County, who were serving as Pages.

Representative Bill Culpepper was recognized to explain HB 1640, A BILL TO BE ENTITLED AN ACT TO INCLUDE THE TOWN OF DUCK AS A MUNICIPALITY AUTHORIZED TO REGULATE AND CONTROL SWIMMING, PERSONAL WATERCRAFT, SURFING, AND LITTERING IN THE ATLANTIC OCEAN AND OTHER WATERWAYS ADJACENT TO THAT PORTION OF THE TOWN WITHIN ITS BOUNDARIES OR WITHIN ITS EXTRATERRITORIAL JURISDICTION; TO DESIGNATE THE TOWN COUNCIL OF THE TOWN OF DUCK AS THE GOVERNING BODY OF THE DUCK AREA BEAUTIFICATION DISTRICT; TO PERMIT THE TOWN OF MANTEO TO DECREASE THE DISTANCE WITHIN WHICH A VEHICLE MAY PARK FROM THE INTERSECTION OF CURB LINES; AND TO AMEND THE DEFINITION OF SUBDIVISION AS IT APPLIES IN CHOWAN COUNTY. Upon motion of Representative Buchanan, the Proposed Committee Substitute was adopted for discussion.

Representative Culpepper explained that HB 1640 adds the Town of Duck to a group of municipalities authorized to regulate and control swimming, personal watercraft operation, surfing, and littering in the Atlantic Ocean and other waterways adjacent to the Town. The Bill also designates the Town as the governing board of the existing Duck Area Beautification District. The PCS adds two additional provisions that would permit the Town of Manteo to decrease the distance within which a vehicle may park from the intersection of curb lines and amends the definition of "subdivision" as it applies in Chowan County. Representative Hill moved to give the PCS (#2) a favorable report, which changes the title, unfavorable as to

Committee Substitute Bill #1. The motion carried. Copies of the PCS, Bill, and Bill Summary are attached as part of these minutes.

The next order of business was HB 1751, A BILL TO BE ENTITLED AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM. Upon motion of Representative Buchanan, the Proposed Committee Substitute for HB 1751 was adopted for discussion. At Representative Earle's request, Martha Walston of the Fiscal Research staff was recognized to explain some of the changes in the new PCS. Ms. Walston pointed out that the new PCS makes a number of clarifying amendments and one substantive amendment, as follows:

- Clarifies that an owner of a qualified project is a unit of local government that owns the project in whole or at least 50% partnership with a private individual or entity.
- Increases the membership of the Travel and Tourism Grant Committee to include an elected local government official representing the Piedmont and appointed by the Governor. There will now be three elected local government officials representing all three geographic areas of the State.
- Clarified that the applicant (was taxpayer) for a grant must pay the application fee. The applicant would be the owner of the project.
- Clarifies in the list of qualifications that the project will have a positive economic impact on the community in which the project is located and will generate at least 10 new jobs in the community (was local area) in which the project is located.
- Clarifies that the economic impact analysis and feasibility study must be certified by a certified public accountant.
- Clarifies that the Committee must provide information to the Department of Revenue that includes the name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project.

Following a lengthy discussion, Representative Earle pointed out that the Bill would not impact the State's revenue until the year after next and urged the members to give it a favorable report. Representative Pope offered an Amendment that would amend the Bill on page 3, lines 32 and 33, by inserting the following new condition between those lines: "(13) The applicant has certified that the project will not be created, expanded, or renovated unless the applicant is awarded a grant." Amendment No. 1 was adopted.

Representative Pope then offered an Amendment that would amend the Bill on page 4, line 40, by adding the following sentence after the period: "No more than twenty million dollars ($20,000,000) in grants shall be awarded each fiscal year." Joe Stewart of the Department of State Treasurer, spoke in favor of the Amendment, stating that the Treasurer would prefer a cap on the grants. Amendment No. 2 was adopted.

Representative Pope offered a third Amendment, which inserted the following new condition between lines 32 and 33, page 3: "(13) The project is not a facility primarily for the use of a professional or semiprofessional sports team or club." Amendment No. 3 failed.

Because of time constraints, Chairman Allen announced that debate on the Bill would be continued at the next meeting of the Finance Committee. He adjourned the meeting at 9:50 A.M.

Respectfully submitted,

Representative Gordon P. Allen
Presiding Chair

Nancy G. Brantley
Committee Assistant

Attachments:

PCS for House Bill 1640
Committee Report
PCS for House Bill 1751
Amendments
Visitor Registration Sheet

AGENDA

House Finance Committee

September 5, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen
Representative Charles Buchanan

Representative Paul Luebke
Representative William Wainwright

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1640	**TOWN OF DUCK WATERCRAFT AND BEAUTIFICATION** **Rep. Culpepper**
HB 1751	**NC TOURISM DEVELOPMENT ACT** **Reps. Earle, McMahan, McComas and Barefoot**

ADJOURNMENT

VISITOR REGISTRATION SHEET

FINANCE
Name of Committee

September 5, 2002
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Hobbs	NCHLA
	NCRA
	SMI-H
	Rgt of State Troopers
	Capitol Group
Andy Sabol	NCDOR
	NCDOR
Angie Harris	MTE
Mohammad Jenatian	HTA
VL McBride	NCTA
Beau Mills	NC Metro Coalition

VISITOR REGISTRATION SHEET

FINANCE — September 5, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John McHugh	Devonshire
Ken Melton	Alley Associates, Inc.
Katherine Gaye	Electric Cooperatives

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☒ Committee Substitute for
H.B. 1640 A BILL TO BE ENTITLED AN ACT TO INCLUDE THE TOWN OF DUCK AS A MUNICIPALITY AUTHORIZED TO REGULATE AND CONTROL SWIMMING, PERSONAL WATERCRAFT, SURFING, AND LITTERING IN THE ATLANTIC OCEAN AND OTHER WATERWAYS ADJACENT TO THAT PORTION OF THE TOWN WITHIN ITS BOUNDARIES OR WITHIN ITS EXTRATERRITORIAL JURISDICTION AND TO DESIGNATE THE TOWN COUNCIL OF THE TOWN OF DUCK AS THE GOVERNING BODY OF THE DUCK AREA BEAUTIFICATION DISTRICT.

☐ 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 (# 2), ☒ which changes the title, unfavorable as to ~~(the original bill)~~ (Committee Substitute Bill # 1) ~~(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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1640

Committee Substitute Favorable 7/31/02

PROPOSED COMMITTEE SUBSTITUTE H1640-PCS5458-STx-109

Short Title: Duck/Manteo/Chowan County Local Amendments. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO INCLUDE THE TOWN OF DUCK AS A MUNICIPALITY AUTHORIZED TO REGULATE AND CONTROL SWIMMING, PERSONAL WATERCRAFT, SURFING, AND LITTERING IN THE ATLANTIC OCEAN AND OTHER WATERWAYS ADJACENT TO THAT PORTION OF THE TOWN WITHIN ITS BOUNDARIES OR WITHIN ITS EXTRATERRITORIAL JURISDICTION; TO DESIGNATE THE TOWN COUNCIL OF THE TOWN OF DUCK AS THE GOVERNING BODY OF THE DUCK AREA BEAUTIFICATION DISTRICT; TO PERMIT THE TOWN OF MANTEO TO DECREASE THE DISTANCE WITHIN WHICH A VEHICLE MAY PARK FROM THE INTERSECTION OF CURB LINES; AND TO AMEND THE DEFINITION OF SUBDIVISION AS IT APPLIES IN CHOWAN COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-176.2(b) reads as rewritten:

"(b) Subsection (a) of this section applies to the Towns of Atlantic Beach, Cape Carteret, Carolina Beach, Caswell Beach, Duck, Emerald Isle, Holden Beach, Kill Devil Hills, Kitty Hawk, Long Beach, Manteo, Nags Head, Ocean Isle Beach, Southern Shores, Sunset Beach, Topsail Beach, Wrightsville Beach, and Yaupon Beach, and the City of Southport only."

SECTION 2. Section 4 of Chapter 991 of the 1983 Session Laws, Regular Session 1984, as amended by Section 23(a) of Chapter 646 of the 1995 Session Laws, Regular Session 1996, reads as rewritten:

"**Sec. 4.** District Established; Tax Levy. If a majority of the qualified voters voting in an election called under Section 1 of this act vote in favor of creating the Duck Area Beautification District and authorizing the levy and collection of an ad valorem tax in the district, the Dare County Board of Commissioners shall, upon receipt of a certified copy of the election results, adopt a resolution creating the Duck Area Beautification

District and shall file a copy of the resolution with the clerk of superior court of Dare County. ~~Upon establishing the Duck Area Beautification District, the Dare County Board of Commissioners~~ The Town Council of the Town of Duck may annually levy on behalf of the district an ad valorem tax on all taxable property in the district in an amount the ~~board~~ town council considers necessary to provide for the installation of underground power lines, not to exceed ten cents (10¢) for each one hundred dollars ($100.00) taxable valuation of property. The proceeds of this tax shall be used only to provide for the underground installation of power lines in the district."

SECTION 3. Section 5 of Chapter 991 of the 1983 Session Laws, Regular Session 1984, reads as rewritten:

"**Sec. 5.** Nature of District; Governing Body. If created, the Duck Area Beautification District shall be a body politic and corporate and shall have the power to provide for the installation of underground power lines and do all acts reasonably necessary to fulfill this purpose. The ~~Dare County Board of Commissioners~~ Town Council of the Town of Duck shall serve, ex officio, as the governing body of the district, and the officers of the ~~board of county commissioners~~ town council shall likewise serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present."

SECTION 4. Section 3 of S.L. 1993-610, as amended by S.L. 1995-101, reads as rewritten:

"**Sec. 3.** Tax Levy. – If a majority of the qualified voters voting on the question in an election called under Section 1 of this act vote in favor of authorizing the levy and collection of ad valorem taxes in the district, the Dare County Board of Commissioners may levy on behalf of the district the ad valorem tax on all taxable property in the district in an amount the Board considers necessary to construct the sidewalks within the district not to exceed five cents (5¢) for each one hundred dollars ($100.00) taxable valuation of property for two consecutive years beginning no later than the second fiscal year that begins after the election, and thereafter the ~~Board~~ Town Council of the Town of Duck may annually levy on behalf of the district an ad valorem tax in the amount necessary to maintain the sidewalks but not to exceed one cent (1¢) for each one hundred dollars ($100.00) taxable valuation of property. The proceeds of these taxes shall be used only to construct and maintain the sidewalks within the district."

SECTION 5. Section 4 of S.L. 1993-610 reads as rewritten:

"**Sec. 4.** Governing Body. – All matters relative to the construction and maintenance of the sidewalks shall be decided by the ~~Dare County Board of Commissioners,~~ Town Council of the Town of Duck, which is the governing body of the Duck Area Beautification District as provided in Chapter 991 of the 1983 Session Laws."

SECTION 6. Any Duck Area Beautification District tax levied by the Dare County Board of Commissioners pursuant to Chapter 991 of the 1983 Session Laws, Regular Session 1984, for the 2002 and prior tax years shall continue to be valid on and after the effective date of this act.

SECTION 7. G.S. 20-162(a) reads as rewritten:

"(a) No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within 15 feet in either direction of a fire hydrant or the entrance to a fire station, nor within 25 feet from the intersection of curb lines or if none, then within 15 feet of the intersection of property lines at an intersection of highways; provided, that local authorities may by ordinance decrease the distance within which a vehicle may park in either direction of a fire ~~hydrant.~~ hydrant or from the intersection of curb lines. The local authority may not decrease the distance from the intersection of curb lines to less than 15 feet."

SECTION 8. G.S. 153A-335 reads as rewritten:

"§ 153A-335. "Subdivision" defined.

For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into ~~two~~ three or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision ~~regulations.~~regulations;

(5) The gift of a parent of a single lot to his or her child or each of his or her children where no new road is involved, provided:

a. That each and every lot has dedicated right-of-way access to the State-maintained road serving the principal parcel or direct access to an approved private road as defined in the ordinance; and

b. There are no more than three such conveyances."

SECTION 9. Section 7 of this act shall apply to the Town of Manteo only.

SECTION 10. Section 8 of this act shall apply to the County of Chowan only.

SECTION 11. Sections 2 through 6 of this act become effective January 1, 2003. The remainder of this act is effective when it becomes law.

Adapted

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1640
Committee Substitute Favorable 7/31/02
PROPOSED COMMITTEE SUBSTITUTE H1640-PCS5458-STx-109

Short Title: Duck/Manteo/Chowan County Local Amendments. (Local)

Sponsors:

Referred to:

June 13, 2002

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SECTION 7. G.S. 20-162(a) reads as rewritten:

"(a) No person shall park a vehicle or permit it to stand, whether attended or unattended, upon a highway in front of a private driveway or within 15 feet in either direction of a fire hydrant or the entrance to a fire station, nor within 25 feet from the intersection of curb lines or if none, then within 15 feet of the intersection of property lines at an intersection of highways; provided, that local authorities may by ordinance decrease the distance within which a vehicle may park in either direction of a fire ~~hydrant.~~ hydrant or from the intersection of curb lines. The local authority may not decrease the distance from the intersection of curb lines to less than 15 feet."

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(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision ~~regulations.~~regulations;

(5) The gift of a parent of a single lot to his or her child or each of his or her children where no new road is involved, provided:

a. That each and every lot has dedicated right-of-way access to the State-maintained road serving the principal parcel or direct access to an approved private road as defined in the ordinance; and

b. There are no more than three such conveyances."

SECTION 9. Section 7 of this act shall apply to the Town of Manteo only.

SECTION 10. Section 8 of this act shall apply to the County of Chowan only.

SECTION 11. Sections 2 through 6 of this act become effective January 1, 2003. The remainder of this act is effective when it becomes law.

HOUSE BILL 1640: Duck/Manteo/Chowan County Local Amendments

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Culpepper
Date:	September 5, 2002	**Summary by:**	Trina Griffin*
Version:	PCS for 2nd Edition		Committee Counsel
	H1640-PCS5458-STx-109		

SUMMARY: House Bill 1640 makes two changes affecting the Town of Duck:

- *It adds the Town to a group of municipalities authorized to regulate and control swimming, personal watercraft operation, surfing, and littering in the Atlantic Ocean and other waterways adjacent to the Town; and*
- *It designates the Town as the governing board of the existing Duck Area Beautification District.*

The proposed committee substitute adds two additional provisions that would:

- *Permit the Town of Manteo to decrease the distance within which a vehicle may park from the intersection of curb lines; and*
- *Amend the definition of "subdivision" as it applies in Chowan County.*

BILL ANALYSIS:

Section 1: Regulation of Certain Coastal Activities

Currently, eighteen coastal municipalities are authorized to adopt ordinances to regulate and control swimming, personal watercraft operation, surfing, and littering in the Atlantic Ocean and other waterways adjacent to the municipalities.

Section 1 of House Bill 1640 would add the Town of Duck to the group of municipalities authorized to regulate those activities, effective when the act becomes law.

Sections 2-6: Change Governing Body of Duck Area Beautification District

Sections 2 through 6 of the bill make amendments to the law governing the existing Duck Area Beautification District, effective January 1, 2003. The Duck Area Beautification District, created in 1984, is governed by the Dare County Board of Commissioners, and is authorized to levy a property tax for the purpose of placing power lines underground and to build and maintain sidewalks.

House Bill 1640 would replace the Dare County Board of Commissioners with the Town Board of the Town of Duck (incorporated in 2001) as the governing Board of the Duck Area Beautification District.

Section 7: Local Modification of Parking Regulation

Under current law, a person is not permitted to park a vehicle within 25 feet from the intersection of curb lines. Section 7 of the bill would authorize the Town of Manteo only to decrease the distance within which a vehicle may park from the intersection of curb lines. However, the town may not decrease the distance to less than 15 feet. This section would be effective when the act becomes law.

Section 8: Local Modification of the Definition of Subdivision

Under current general law, the definition of "subdivision" is a division of a tract of land into two or more lots, building sites, or other divisions for the purpose of sale or building development; but specifically excluding:

1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased.
2. The division of land into parcels greater than 10 acres.
3. The public acquisition of strips of land for widening or opening streets.
4. The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots.

The proposed committee substitute would amend the definition as it applies to Chowan County, to state that the division of land would have to be three or more lots to be a subdivision, and would add an additional exemption for transfers of a single lot from parent to child. Amendments similar to these have previously been enacted for counties such as Davie, Harnett, Jones, Montgomery, Onslow, Richmond and Stanly.

*Giles Perry and Erika Churchill, Counsel for House Local Government I, substantially contributed to this summary

Adapted

1/1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

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

H1751-ALA-76 [v.3]

Date 9-5-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
CSLAf-83

Representative Pope

moves to amend the bill on page 3, lines 32 and 33, by inserting the following new condition between those lines:

"(13) The applicant has certified that the project will not be created, expanded, or renovated unless the applicant is awarded a grant."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1751-ALA-81 [v.3]

Date 9-5-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
CSLAf-83

Representative Pope

moves to amend the bill on page 4, line 40, by adding the following sentence after the period:
"No more than twenty million dollars ($20,000,000) in grants shall be awarded each fiscal year."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1751-ALA-90 [v.1]

Date 9-5-02 ,2002

Comm. Sub. [NO]
Amends Title [NO]
PCS

Representative Pope

moves to amend the bill on page 3, lines 32 and 33, by inserting the following new condition between those lines:

"(13) The project is not a facility primarily for the use of a professional or semiprofessional sports team or club."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1751
PROPOSED COMMITTEE SUBSTITUTE H1751-CSLAf-88 [v.7]

9/4/2002 2:51:47 PM

Short Title: NC Tourism Development Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

(a) Program Established. – There is established the Travel and Tourism Capital Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee established in subsection (c) of this section may award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. Grant proceeds may not be distributed to any private individual or entity. The Committee shall develop guidelines to be used in determining whether the conditions in this section are satisfied and whether the project described in the application is consistent with the grant program.

(b) Owner Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, the owner of a qualified project is the unit of local government that will own the qualified project in whole or in at least fifty percent (50%) partnership with a private individual or entity.

(c) Unit of Local Government Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, a unit of local government means a county or municipality in the State.

(d) Committee. – The Travel and Tourism Grant Committee shall consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and three elected local government officials. One elected local government official shall represent the Mountains and shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. One elected local government official shall represent the Piedmont and

shall be appointed by the Governor. One elected local government official shall represent the Coastal Plain and shall be appointed by the General Assembly upon the recommendation of the President Pro Tem of the Senate. The elected local government officials may not be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The General Assembly and Governor appointees shall serve two-year terms. The Committee may act only upon a unanimous decision of its members.

It is unlawful for a member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any project that was awarded a grant under this section while the former member was serving on the Committee, or to provide services for compensation to any person or entity that contracts with the project. Violation of this subsection is a Class 1 misdemeanor.

Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

(e) Application and Fee. – The owner of a qualified project may apply for a grant no later than one year after the qualified project is opened to the public. When filing an application under this section, the applicant must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this subsection among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

The application must contain all information required by the Committee, including a certification of the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use the grant funds. If the tourism project is the result of a public-private partnership, the grant application must set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement. The application must be signed by the finance officer and the chair of the governing body of the owner.

(f) Qualification. – A qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project that the Committee determines, pursuant to a feasibility study under this section, meets all of the following conditions:

(1) At least half of the project will be financed and owned by a unit of local government in which it is located.

(2) The project will target at least thirty-five percent (35%) of its visitors from among persons who reside outside the State or more than 100 miles from the project.

(3) The project has a business plan that demonstrates a positive economic impact on the community in which the project is located.

(4) The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.

(5) The project will have a significant and positive economic impact on the community in which the project is located, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.

(6) The applicant has provided a cost-benefit analysis of the project.

(7) The applicant has provided an economic impact analysis, certified by a certified public accountant, which demonstrates the employment, gross state product, and personal income effects of the project over a 10-year period.

(8) The project will be available to the public for a minimum of 100 days per year.

(9) The project will generate at least 10 new jobs in the community in which the project is located.

(10) The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

(11) The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

(12) The applicant has demonstrated by clear and convincing evidence all of the following:

a. The project will not result in unnecessary duplication of existing services.

b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

(g) Feasibility Study. – The applicant must fund a feasibility study, certified by a certified public accountant, and coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(h) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected and retained by the State each year:

(1) The net State sales tax collected on sales by or within the qualified project, as determined by the Department of Revenue.

(2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as determined by the Department of Revenue.

(i) Maximums. – The maximum term of a grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

Enterprise Tier	Percentage
1 and 2	35
3 and 4	30
5	25

(j) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(k) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (h) of this section. These reports must be made at the times and in the form prescribed by the Department of Revenue. Each report must include the name, address, and tax identification number of every taxpayer whose collections are included in the report and any other information required by the Department of Revenue.

The Department of Revenue must disburse grants awarded under this section in accordance with G.S. 105-269.16. Upon awarding a grant under this section, the Committee must provide the following information to the Department of Revenue:

(1) The name, address, and other identifying information of the owner to whom the grant was awarded.

(2) The name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project.

(3) The address and other identifying information of each facility that is part of the qualified project for which the grant was awarded.

(4) The applicable percentage and the maximum cumulative amount of the grant as determined in accordance with this section.

(5) Any other information included in the application, if required by the Department of Revenue.

(l) Reports. – The Committee must report annually to the Revenue Laws Study Committee concerning the applications made for grants and the grants awarded under this section.

(m) Cap - The maximum number of projects that may be awarded grants each fiscal year is ten."

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.16. Travel and tourism grants.**

The Department must annually disburse the travel and tourism grants awarded under G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the preceding fiscal year. The amount of each grant must be calculated in accordance with G.S. 143B-434.4 based on information provided to the Department by the owner of the qualified project. If information necessary to calculate a portion of a grant is not available, the Department must disburse only that portion for which information is available. To pay for this program, the Department must draw from State sales and use tax collections under Article 5 of this Chapter an amount equal to the grant funds disbursed and the Department's costs of administering the grants. The Department must provide the Committee an annual accounting of grant funds disbursed under this section."

SECTION 3. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

....

(10) The Travel and Tourism Grant Committee in developing guidelines for the Travel and Tourism Capital Incentive Grant Program under G.S. 143B-434.4 of the General Statutes."

SECTION 4. This act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

HOUSE BILL 1751:
NC Tourism Development Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Earle, McMahan,
Date:	September 4, 2002	McComas, and Barefoot	
Version:	H1751-CSLAf-88	**Analysis by:**	Martha Walston Committee Counsel

BILL ANALYSIS: House Bill 1751 creates the Travel and Tourism Capital Incentive Grant Program. The act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005. The new proposed committee substitute makes a number of clarifying amendments and one substantive amendment:

- Clarifies that an owner of a qualified project is a unit of local government that owns the project in whole or at least 50% partnership with a private individual or entity. (Page 1, lines 18 and 19)
- Increases the membership of the Travel and Tourism Grant Committee to include an elected local government official representing the Piedmont and appointed by the Governor. There will now be three elected local government officials representing all three geographic areas of the State. (Page 1, lines 25 and 28, and Page 2, line 1)
- Clarifies that the applicant (was taxpayer) for a grant must pay the application fee. The applicant would be the owner of the project. (Page 2, line 21)
- Clarifies that a qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project. (Page 2, lines 34 and 35)
- Clarifies in the list of qualifications that the project will have a positive economic impact on the community in which the project is located and will generate at least 10 new jobs in the community (was local area) in which the project is located. (Page 2, lines 43 and 44, and page 3, lines 3 and 4).
- Clarifies that the economic impact analysis and feasibility study must be certified by a certified public accountant. (Page 3, lines 10 and 11, and lines 33 and 34)
- Clarifies that the Committee must provide information to the Department of Revenue that includes the name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project. (Page 4, line 29).

Grant recipient - Grants may be awarded to a unit of local government that owns a qualified project in whole or in at least 50% partnership with a private individual or entity. Grant proceeds may not be distributed to any private individual or entity. A "unit of local government" is defined in the bill as a county or municipality in the State.

Qualified project - A qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project that the Travel and Tourism Grant

Committee determines, pursuant to a feasibility study funded by the applicant, meets the following conditions.

1. At least half of the project will be financed and owned by a unit of local government in which it is located
2. The project will target at least 35% of its visitors from among persons who reside outside the State or more than 100 miles from the project.
3. The project has a business plan that demonstrates a positive economic impact on the community in which the project is located.
4. The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.
5. The project will have a significant and positive economic impact on the community in which the project is located, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.
6. The applicant has provided a cost-benefit analysis of the project.
7. The applicant has provided an economic impact analysis, certified by a CPA, which demonstrates the employment, gross state product, and personal income effects of the project over a 10-year period.
8. The project will be available to the public for a minimum of 100 days per year.
9. The project will generate at least 10 new jobs in the community in which the project is located.
10. The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

11. The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.
12. The applicant has demonstrated by clear and convincing evidence all of the following
    a. The project will not result in unnecessary duplication of existing services.
    b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

Amount of the grant - The amount of the grant is determined by multiplying the sum of the total amount of sales taxes collected on sales by or within the qualified project and the net privilege taxes paid by the qualifying project times an enterprise tier percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amount of the total project cost that can be funded through the program.

Maximum. – The maximum term of the grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

Use of grant proceeds. - The proceeds of the grant may be used only for capital costs, including debt service, with respect to the qualified project.

Cap on number of projects - No more than 10 projects may be awarded grants each fiscal year.

Travel and Tourism Grant Committee - The Travel and Tourism Grant Committee shall consist of six members: the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and three elected local government officials who will serve two-year terms. The Speaker of the House will appoint an official who represents the Mountains, the President Pro Tem of the Senate will appoint an official who represents the Coastal Plain, and the Governor will appoint an official who represents the Piedmont. The elected local government officials may not be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The Committee may only act upon unanimous consent. The Committee is subject to the open meetings law and the public records law. Members of the Committee are forbidden to work for a business that receives a grant under this program, or to provide services for compensation to any person or entity who contracts with the project, for a period of two years after the member's service on the Committee ends.

Fees. - Each applicant must pay the Committee a $5,000 application fee.

Information provided by the Committee. Upon awarding a grant, the Committee must provide the Department of Revenue with specific information.

Disbursement of grants by the Department of Revenue - The Department of Revenue must annually disburse the grants by October 1 for the preceding fiscal year, based on information provided to the Department by the owner of the qualified project. In order to pay for the Grant Program, the Department will draw from State sales and use tax collections an amount equal to the grant funds disbursed and the Department's costs of administering the grants.

Exemption from rule making. – The Travel and Tourism Grant Committee is exempt from the rule making provisions under the Administrative Procedure Act when developing guidelines for the Grant Program.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1751 PCS- H1751-CSLAf-88

DRAFT

SHORT TITLE: NC Tourism Development Act

SPONSOR(S): Representatives Earle, McMahan, McComas, and Barefoot

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
Sales Tax	**0**		*** See Assumptions and Methodology ***		
EXPENDITURES					
Travel and Tourism Grant Committee			*** See Assumptions and Methodology ***		
Dept. of Revenue			*** See Assumptions and Methodology ***		
POSITIONS:					
Department of Revenue					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Travel and Tourism Grant Committee, NC Department of Revenue, and local governments.

EFFECTIVE DATE: January 1, 2003

BILL SUMMARY: The bill creates the Travel and Tourism Capital Incentive Grant program to be administered by the Travel and Tourism Grant Committee. The program offers grants to counties and municipalities who own "qualifying projects" that meet the following criteria: 1) the project is financed and owned (in whole or at least in 50% partnership) by the unit of local government in which it is located, 2) the project will target 35% or more of its visitors from at least 100 miles away or out of state, 3) the project has a business plan that indicates that project will be profitable, 4) the applicant provides tax impact projections, 5) the project will have a significant and positive impact on the community, 6) the project will be open at least 100 days per year, 7) the project will generate at least ten new jobs in the local area, 8) the projects will meet a minimum cost criteria based on the North Carolina enterprise tier in which it is located, 9) the governing body of the local government passes a resolution stating the need for, positive economic impact of, and the enhanced travel and tourism opportunities created by the project, 10) the applicant demonstrates that the project will not duplicate services and will draw new visitors to the area. Grant funds can be used to fund new projects or the renovation and

expansion of existing facilities. The grant amount is determined by multiplying the total amount of sales taxes collected on sales by or within the qualified program and the net privilege taxes paid by the qualifying project by an enterprise tier based percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amounts of the total project cost that can be funded through this grant program. The Travel and Tourism Grant Committee is charged with determining if all project criteria are met and the percentages used to calculate the grant amount. Grant funds can only be used for capital costs, including debt service. To receive a grant disbursement, the project owner must provide the Department of Revenue with periodic, verified accounting of the tax collections. Annual disbursements based on this information must be made by the Department of Revenue by October 1 of each year and should reflect tax collections from that project for the previous fiscal year. The Department is only required to distribute funds based on data provided by the owner. If appropriate data is not provided to justify a complete payment, a partial payment can be made to reflect the information provided. Applicants must fund a feasibility study coordinated and directed by the Travel and Tourism Grant Committee and pay a $5,000 application fee. The funds to pay for the grants and the associated departmental costs are drawn from State sales and use tax revenues. The grant application period for the bill sunsets July 1, 2005, although payments for grants authorized before that date will continue to be made up to ten years after the initial award. Only ten (10) grants can be awarded per year.

ASSUMPTIONS AND METHODOLOGY:

Impact on Revenue

The bill effectively earmarks a proportion of state tax revenue drawn from a particular qualifying project and returns that funding to the institution to fund capital costs and debt service. The proportion returned varies by location and other factors. The bill would allow funding for ten projects a year, with a maximum of thirty grants awarded before the July 1, 2005 sunset. At present Fiscal Research is aware of several potential projects that have already reach the planning stages, primarily arenas, convention centers and athletic facilities, that could easily qualify for these grants, although local government officials indicate that many local units would likely be interested applying for these grants. Fiscal Research is also not aware of any other state that uses a similar funding mechanism, so no data is available from other states to suggest a fiscal cost. (Kentucky has a state sales tax incentive program for tourism development, which has funded seven (7) projects to date. However, because of substantial differences in the Kentucky plan and this bill, that state's experience can not be used as a proxy for estimating purposes). Because there is no good data on the type, size and location of qualifying projects or potentially qualifying projects, no fiscal estimate on this portion of the bill is possible. Because all economic activity, in total, is considered in determining the state's baseline revenue projections, all grants awarded under this program would be shown as a loss of state revenue. Depending on the type of projects that qualify for the program, the loss could be substantial, as there is no cap on the revenue invested in the program, or it could be more limited if few facilities are created or participate. However, none of that loss would appear in FY 2002-03, as the first payment would not be made for any project until October 2003.

Impact on Expenditures

Travel and Tourism Grant Committee: The bill charges the Travel and Tourism Grant Committee (the Committee) with carrying out the following activities in order to administer the grant program:

1. Adopt rules for the administration of the program.

2. Coordinate and direct feasibility studies funded by the applicants. This coordination function includes selection by the Department of qualified, independent consultants and prescription of the scope of each study.

3. Analyze applications to ensure they contain all necessary information regarding the nature and cost of the proposed tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use grant funds.

Each of these activities will involve a cost to the Committee. The bill allows the Committee itself to determine how the fee revenue and associated responsibilities will be distributed. Since the bill does not specify the financial structure of the Committee, how the Committee will operate, or how the Committee will utilize the $5,000 fee per application, it is not possible to estimate the fiscal impact on the Committee.

Department of Revenue: According to the Department of Revenue, the anticipated responsibilities from the enactment of the bill will not justify any positions being assigned to handle the work and, therefore, no employee costs will be incurred. There will only be very minimal costs for printing and mailings of forms and possibly some other minor administrative costs. The Department's assumption is that there will be a relatively small number of projects that will qualify, at least initially. Therefore, on the basis of this assumption, taxes eligible for grants will not be generated until a project is completed and business performed in the project. The first fiscal year for which grants could be issued would most likely be FY 2003-2004. This should provide the department with ample time to get procedures in place.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps, Adam Levinson, and Michele Nelson

APPROVED BY:
DATE: September 4, 2002

House Committee on Finance

Minutes
September 17, 2002

The House Committee on Finance met on Tuesday, September 17, 2002, at 8:30 A.M., in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, and Luebke; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Decker, Edwards, Gibson, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Pope, Rayfield, Weiss, Willingham, Womble, Baddour, Cunningham, and Earle. The following Sergeant-at-Arms staff were present: Dusty Rhodes, Walter Spell, and Earl Tharrington. Staff persons present included: Trina Griffin, Martha Walston, Richard Bostic, Linda Millsaps and Committee Assistants Nancy Brantley, Blinda Edwards, and Glenda Jones. The Visitor Registration Sheet and Agenda are attached and incorporated as part of these minutes.

Chairman Buchanan opened the meeting and recognized Representative Hill to explain HB 1745, A BILL TO BE ENTITLED AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES, TO MODIFY THE LOGO ON THE ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATE, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL LICENSE PLATE FOR AVIATION MAINTENANCE TECHNICIANS, NORTH CAROLINA AGRIBUSINESS, AND THE STATE'S OFFICIAL VEGETABLE, THE SWEET POTATO. Representative Hill noted that the Finance Committee had given the original bill a favorable report, and the bill was now in House Finance for a recommendation as to whether or not the House should concur with the changes made to the bill by the Senate. By motion of Representative Hill, HB 1745, as amended by the Senate, was given a favorable report. Copies of the PCS, Bill, Bill Summary and Fiscal Note are attached as part of these minutes.

Chairman Allen presided over the next order of business, which was continuation of discussion on House Bill 1751, A BILL TO BE ENTITLED AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM. He noted that this bill had been discussed at the September 5 meeting of the Finance Committee with two amendments adopted but with no vote taken on the bill itself. He said there were several amendments to be offered at today's meeting. Representative Earle was recognized to present the Bill, and she urged its favorable consideration by the Committee members.

After discussion of the Bill, the following amendments were presented:

Amendment No. 1. An Amendment offered by Representative Willingham that would change the radius from which visitors are targeted from 100 to 50 miles from a project. The Amendment was adopted.

Amendment No. 2. An Amendment offered by Representatives Decker and Holliman that would delete "$10,000,000" and substitute "$5,000,000" on line 22, page 3; and delete "$20,000,000" and substitute "$10,000,000" on line 23, page 3. The Amendment was adopted.

Amendment No. 3. An Amendment offered by Representative Pope that would amend the bill on page 4, line 40, by adding the following sentence, "For the purpose of this maximum, the amount awarded is calculated as the cumulative maximum amount of the grant divided by the number of years in its term." The Amendment was adopted.

Amendment No. 4. An Amendment offered by Representative Pope that would insert the following new subdivision: "(14) The project is not a facility primarily for the use of a major league professional baseball, football, basketball, or hockey team." The Amendment failed.

Amendment No. 5. An Amendment offered by Representative Pope that would delete the word "target" and substitute the word "attract" on page 2, line 40. The Amendment failed.

Representative Buchanan made a motion that the PCS for HB 1751 receive a favorable report, unfavorable as to the original bill, with recommendation that the committee substitute be re-referred to the Committee on Appropriations. The motion was adopted. Copies of the PCS, Amendments, Bill, Bill Summary, and Fiscal Note are attached as part of these minutes.

There being no further business, the meeting was adjourned at 9:15 A.M.

Respectfully submitted,

Rep. Gordon P. Allen
Presiding Co-Chair

Nancy G. Brantley
Committee Assistant

Rep. Charles F. Buchanan
Presiding Co-Chair

Attachments:
House Bills 1745 and 1751
Committee Reports
Visitor Registration Sheet

AGENDA

House Finance Committee

September 17, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

HB 1745	Special License Plates—Rep. Allred (Back for Concurrence)
HB 1751	NC Tourism Development Act—Rep. Earle, McMahan, McComas, and Barefoot

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — SEPTEMBER 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Williams	NCRA
Jim Hobbs	NCHLA
Mohammad Jenatian	HTA
Sharon Matthews	DOT - DMV
Andy Sabol	NC DOR
Greg Radford	"
Paul Stock	NC Bankers Assn
DAVID BARNES	Poyner + Spruill
Beau Mills	NC Metro Coalition
Ken Melton	Alley Associates, Inc.
ANN LOGUE	DUNS
Mari Lucia	6 S K

VISITOR REGISTRATION SHEET

HOUSE FINANCE — SEPTEMBER 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Lassiter	NCSTA
Mark Benson	Capitol Group
Frank Dyer	SBE
Polly Pockat	Maryland
Bill Scoggin	Kennedy Covington
Butch Dunnells	NCSDA
Colleen Kochanek	Hafer & Caldwell
John McHugh	GOVOFFICE
Nancy Fortson	DOR
Sabra Faires	Dept of Revenue
Hal Miller	NCACCT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — SEPTEMBER 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Diana Wilkins	Mercer & Assocs.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☒ Senate Committee Substitute for
H.B. 1745 A BILL TO BE ENTITLED AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES, TO MODIFY THE LOGO ON THE ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATE, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL LICENSE PLATE FOR AVIATION MAINTENANCE TECHNICIANS AND A SPECIAL LICENSE PLATE FOR THE STATE'S OFFICIAL VEGETABLE, THE SWEET POTATO.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 3

HOUSE BILL 1745

Senate Finance Committee Substitute Adopted 8/15/02
Third Edition Engrossed 8/27/02

Short Title: Special License Plates. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE 300 PLATE REQUIREMENT FROM SPECIAL LICENSE PLATES FOR WORLD WAR II AND KOREAN CONFLICT VETERANS' PLATES, TO MODIFY THE LOGO ON THE ROCKY MOUNTAIN ELK FOUNDATION SPECIAL LICENSE PLATE, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A SPECIAL LICENSE PLATE FOR AVIATION MAINTENANCE TECHNICIANS, NORTH CAROLINA AGRIBUSINESS, AND THE STATE'S OFFICIAL VEGETABLE, THE SWEET POTATO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b)(27b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(27b) Military Wartime Veteran. – Issuable to either a member or veteran of the armed services of the United States who served during a period of war. If the person is a veteran of the armed services, then the veteran must be separated from the armed services under honorable conditions. The plate shall bear a word or phrase identifying the period of war and a replica of the campaign badge or medal awarded for that war. ~~The~~ Except for World War II and Korean Conflict plates, the Division may not issue a plate authorized by this subdivision unless it receives at least 300 applications for that plate. A "period of war" is any of the following:

a. World War I, meaning the period beginning April 16, 1917, and ending November 11, 1918.

b. World War II, meaning the period beginning December 7, 1941, and ending December 31, 1946.

c. The Korean Conflict, meaning the period beginning June 27, 1950, and ending January 31, 1955.
d. The Vietnam Era, meaning the period beginning August 5, 1964, and ending May 7, 1975.
e. Desert Storm, meaning the period beginning August 2, 1990, and ending April 11, 1991.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

..."

SECTION 2. G.S. 20-79.4(b)(36b) reads as rewritten:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(36b) Rocky Mountain Elk Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the phrase "Rocky Mountain Elk Foundation" and a ~~replica of the "Walking Bull"~~ logo ~~of the Rocky Mountain Elk Foundation, Inc. The Division shall not develop this plate unless the~~ approved by the Rocky Mountain Elk Foundation, Inc. ~~licenses, without charge, the State to use the "Walking Bull" logo on the plate.~~

...."

SECTION 3. G.S. 20-79.4(b)(3c) is recodified as G.S. 20-79.4(b)(3d) and G.S. 20-79.4(b)(45b) is recodified as G.S. 20-79.4(b)(45c).

SECTION 4. G.S. 20-79.4(b) is amended by adding two new subdivisions to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3c) Aviation Maintenance Technician. – Issuable to a person who is a Federal Aviation Authority certified Aviation Maintenance Technician. The plate shall bear the logo of the F.A.A. Airworthiness Program and the initials "A.M.T." The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

...

(28b) NC Agribusiness. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of the North Carolina Agribusiness Council, Inc., and the phrase 'NC's #1 Industry'.

...

(45b) Sweet Potato. – Issuable to the registered owner of a motor vehicle. The plate may bear a phrase and picture representing the State's official vegetable, the sweet potato. The Division may not issue the

plate authorized by this subdivision unless it receives at least 300 applications for the plate.

..."

SECTION 5. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
NC Agribusiness	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None

Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 6. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
NC Agribusiness	$10	$15	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

SECTION 7. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) NC Agribusiness. – The Division must receive 300 or more applications for a NC Agribusiness plate before the plate may be developed. The Division must transfer

quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of NC Agribusiness plates to the North Carolina Agribusiness Council, Inc., to be used to promote awareness of the importance of agribusiness in North Carolina."

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

HOUSE BILL 1745:
Special License Plates.

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Allred
Date:	September 4, 2002	**Analysis by:**	Cindy Avrette
Version:	3rd Edition		Committee Counsel

SUMMARY: House Bill 1745 is in House Finance for a recommendation as to whether or not the House should concur with the changes made to the bill by the Senate.

The original bill removes the 300-plate requirement from WWII veteran special plates and Korean Conflict veteran special plates because of the advanced ages of the respective veterans.

The Senate added the following provisions to the bill:

- Modifies the logo for the Rocky Mountain Elk Foundation plate. (SB 1322, Sen. Cunningham) The current law provides that the plate will bear a replica of the "Walking Bull" logo of the Foundation. The plate cannot be developed until the Division receives the license to use the logo without charge. This bill provides that the plate may bear a logo approved by the Foundation as opposed to the licensed logo of the Foundation. The Division's authorization to issue the plate expires June 30, 2006, and this bill does NOT change that sunset.
- Authorizes the issuance of three new special plates. All of the plates would be subject to the 300-plate minimum requirement and all of the plates would be subject to the $10 additional fee credited to the Special Registration Plate Account.
    - It authorizes the Division of Motor Vehicles to issue a special plate for aviation maintenance technicians. (Sen. Berger)
    - It authorizes the Division to issue a special plate for the State's official vegetable, the sweet potato. (Sen. Albertson)
    - It authorizes the Division to issue a special plate for NC Agribusiness. The cost of this plate would be $25. The additional $15 would be transferred quarterly to the NC Agribusiness Council, Inc. to be used to promote awareness of the importance of agribusiness in NC. (Sen. Albertson)

The bill is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1745 (Second Edition)

SHORT TITLE: WWII Korean Conflict Plate Limit Removed

SPONSOR(S): Representative Allred

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Highway Fund					
Special Registration Plate Account			*See Assumptions and Methodology*		
EXPENDITURES					
Highway Fund					
Special Registration Plate Account			*See Assumptions and Methodology*		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Under G.S. 20-79.4(b)(27b), the DMV is authorized to issue a special license plate to WWII and Korean War veterans if at least 300 qualifying individuals request the plate and pay the $10 fee. This legislation removes the 300-person minimum and allows the DMV to issue the plate without receiving 300 applications.

Section 2 of the bill modifies the logo on the Rocky Mountain Elk Foundation special registration plate. The logo removes the requirement that the plate bear a replica of the "Walking Bull" logo, and states that the Rocky Mountain Elk Foundation, Inc. must approve the logo.

Section 4 of the bill authorizes the DMV to issue two additional special registration plates: Aviation Maintenance Technician and Sweet Potato. The 300-application minimum for each plate applies.

ASSUMPTIONS AND METHODOLOGY:

WWII and Korean Veteran Plate

In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a WWII or Korean War plate pays $10 that is deposited into the Special Registration Plate Account.

At present, fewer than 300 applications have been collected for these special license plates. While the DMV has been informed that at least some applications exist, it does not believe the requested 300 applications have been provided to the organization collecting this information. According to the North Carolina Division of Veterans Affairs, there are approximately 110,000 WWII veterans living in the state, at an average age of 81. The Division also suggests that there are approximately 105,000 Korean War Veterans in North Carolina, at an average age of 74. While the Division has no hard data on the status of these veterans, it believes a small percentage of the WWII veterans still maintain a driver's license and vehicle. It believes as many as one-half of the Korean veterans would likely hold a driver's license and maintain a vehicle.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex.

Because there is no way of knowing how many veterans will apply for the plate, no accurate fiscal estimate is possible on either the revenue or expenditure side of this legislation. However, both the cost and the income are expected to be minimal.

Elk Plate

Section 2 of the bill modifies the logo on the Rocky Mountain Elk Foundation special plate. There is no fiscal impact due to this change.

Aviation Maintenance Technician and Sweet Potato Plates

Section 4 of the bill authorizes the DMV to issue two special registration plates: the Aviation Maintenance Technician and Sweet Potato special plates. In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for one of these plates pays $10 that is deposited into the Special Registration Plate Account.

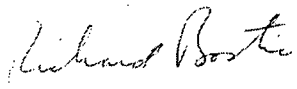
According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex.

The Fiscal Research Division cannot estimate the number of citizens who will request either of these plates, thus no accurate fiscal estimate is possible on the bill.

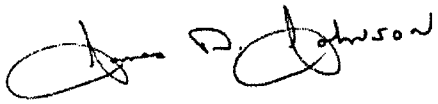
SOURCES OF DATA: NC Division of Motor Vehicles; NC Division of Veteran's Affairs

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Stephanie Schmitt, Research Assistant & Richard Bostic



APPROVED BY: James D. Johnson



DATE: August 15, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1751 A BILL TO BE ENTITLED AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

☐ 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 Appropriations.)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1751
PROPOSED COMMITTEE SUBSTITUTE H1751-PCS8377-LAf-88

Short Title: NC Tourism Development Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

(a) Program Established. – There is established the Travel and Tourism Capital Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee established in subsection (d) of this section may award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. Grant proceeds may not be distributed to any private individual or entity. The Committee shall develop guidelines to be used in determining whether the conditions in this section are satisfied and whether the project described in the application is consistent with the grant program.

(b) Owner Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, the owner of a qualified project is the unit of local government that will own the qualified project in whole or in at least fifty percent (50%) partnership with a private individual or entity.

(c) Unit of Local Government Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, a unit of local government means a county or municipality in the State.

(d) Committee. – The Travel and Tourism Grant Committee shall consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and three elected local government officials. One elected local government official shall represent the Mountains and shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. One elected local government official shall represent the Piedmont and

shall be appointed by the Governor. One elected local government official shall represent the Coastal Plain and shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate. The elected local government officials may not be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The General Assembly and Governor appointees shall serve two-year terms. The Committee may act only upon a unanimous decision of its members.

It is unlawful for a member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any project that was awarded a grant under this section while the former member was serving on the Committee, or to provide services for compensation to any person or entity that contracts with the project. Violation of this subsection is a Class 1 misdemeanor.

Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

(e) Application and Fee. – The owner of a qualified project may apply for a grant no later than one year after the qualified project is opened to the public. When filing an application under this section, the applicant must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this subsection among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

The application must contain all information required by the Committee, including a certification of the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use the grant funds. If the tourism project is the result of a public-private partnership, the grant application must set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement. The application must be signed by the finance officer and the chair of the governing body of the owner.

(f) Qualification. – A qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project that the Committee determines, pursuant to a feasibility study under this section, meets all of the following conditions:

(1) At least half of the project will be financed and owned by a unit of local government in which it is located.

(2) The project will target at least thirty-five percent (35%) of its visitors from among persons who reside outside the State or more than 50 miles from the project.

(3) The project has a business plan that demonstrates a positive economic impact on the community in which the project is located.

(4) The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.

(5) The project will have a significant and positive economic impact on the community in which the project is located, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.

(6) The applicant has provided a cost-benefit analysis of the project.

(7) The applicant has provided an economic impact analysis, certified by a certified public accountant, which demonstrates the employment, gross State product, and personal income effects of the project over a 10-year period.

(8) The project will be available to the public for a minimum of 100 days per year.

(9) The project will generate at least 10 new jobs in the community in which the project is located.

(10) The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000
3 and 4	$ 5,000,000
5	$10,000,000

(11) The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

(12) The applicant has demonstrated by clear and convincing evidence all of the following:

a. The project will not result in unnecessary duplication of existing services.

b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

(13) The applicant has certified that the project will not be created, expanded, or renovated unless the applicant is awarded a grant.

(g) Feasibility Study. – The applicant must fund a feasibility study, certified by a certified public accountant, and coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(h) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected and retained by the State each year:

(1) The net State sales tax collected on sales by or within the qualified project, as determined by the Department of Revenue.

(2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as determined by the Department of Revenue.

(i) Maximums. – The maximum term of a grant is 10 years. No project may receive any grant proceeds for a year that is more than 10 years beyond the date of the initial grant award.

The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

Enterprise Tier	Percentage
1 and 2	35
3 and 4	30
5	25

(j) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(k) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (h) of this section. These reports must be made at the times and in the form prescribed by the Department of Revenue. Each report must include the name, address, and tax identification number of every taxpayer whose collections are included in the report and any other information required by the Department of Revenue.

The Department of Revenue must disburse grants awarded under this section in accordance with G.S. 105-269.16. Upon awarding a grant under this section, the Committee must provide the following information to the Department of Revenue:

(1) The name, address, and other identifying information of the owner to whom the grant was awarded.

(2) The name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project.

(3) The address and other identifying information of each facility that is part of the qualified project for which the grant was awarded.

(4) The applicable percentage and the maximum cumulative amount of the grant as determined in accordance with this section.

(5) Any other information included in the application, if required by the Department of Revenue.

(l) Reports. – The Committee must report annually to the Revenue Laws Study Committee concerning the applications made for grants and the grants awarded under this section.

(m) Cap. – The maximum number of projects that may be awarded grants each fiscal year is 10. No more than twenty million dollars ($20,000,000) in grants shall be awarded each fiscal year. For the purpose of this maximum, the amount awarded is

calculated as the cumulative maximum amount of the grant divided by the number of years in its term."

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.16. Travel and tourism grants.**

The Department must annually disburse the travel and tourism grants awarded under G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the preceding fiscal year. The amount of each grant must be calculated in accordance with G.S. 143B-434.4 based on information provided to the Department by the owner of the qualified project. If information necessary to calculate a portion of a grant is not available, the Department must disburse only that portion for which information is available. To pay for this program, the Department must draw from State sales and use tax collections under Article 5 of this Chapter an amount equal to the grant funds disbursed and the Department's costs of administering the grants. The Department must provide the Committee an annual accounting of grant funds disbursed under this section."

SECTION 3. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

...

(10) The Travel and Tourism Grant Committee in developing guidelines for the Travel and Tourism Capital Incentive Grant Program under G.S. 143B-434.4 of the General Statutes."

SECTION 4. This act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

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

H1751-ALA-92 [v.1]

Date 9-17-02 ,2002

Comm. Sub. [NO]
Amends Title [NO]
PCS

Representative Willingham

moves to amend the bill on page 2, line 41,
by deleting "100"and substituting "50".

SIGNED Shelly Willingham
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H1751-ALA-91 [v.2]

Date 9-17-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Representatives Decker and Holliman

move to amend the bill on page 3, line 22,
by deleting "$10,000,000" and substituting "$5,000,000";

and on page 3, line 23,
by deleting "$20,000,000" and substituting "10,000,000".

SIGNED _____
Amendment Sponsor

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H1751-ALC-215 [v.1]

Date 9-17-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
CSLAf-88

Representative Pope

moves to amend the bill on page 4, line 40, as amended by amendment ALA-81, by adding the following sentence after the sentence added by amendment ALA-81: "For the purpose of this maximum, the amount awarded is calculated as the cumulative maximum amount of the grant divided by the number of years in its term."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 4
(to be filled in by
Principal Clerk)

H1751-ALC-217 [v.1]

Date 9-17-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
PCS

Representative Pope

moves to amend the bill on page 3, lines 32 and 33, as amended, by inserting the following new subdivision:

"(14) The project is not a facility primarily for the use of a major league professional baseball, football, basketball, or hockey team."

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1751

AMENDMENT NO. 5
(to be filled in by
Principal Clerk)

H1751-ALA-77 [v.3]

Date 9-17-02 ,2002

Comm. Sub. [YES]
Amends Title [NO]
CSLAf-83

Representative Pope

moves to amend the bill on page 2, line 40,
by deleting the word "target" and substituting the word "attract".

SIGNED Pope
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED ✓ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1751
PROPOSED COMMITTEE SUBSTITUTE H1751-CSLAf-88 [v.7]

9/4/2002 2:51:47 PM

Short Title: NC Tourism Development Act. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE A TRAVEL AND TOURISM CAPITAL INCENTIVE GRANT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.4. Travel and Tourism Capital Incentive Grant Program.**

(a) Program Established. – There is established the Travel and Tourism Capital Incentive Grant Program. Under the program, the Travel and Tourism Grant Committee established in subsection (c) of this section may award grants to the owners of qualified projects for the purpose of inducing the creation of new or the expansion or renovation of existing travel and tourism projects. Grant proceeds may not be distributed to any private individual or entity. The Committee shall develop guidelines to be used in determining whether the conditions in this section are satisfied and whether the project described in the application is consistent with the grant program.

(b) Owner Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, the owner of a qualified project is the unit of local government that will own the qualified project in whole or in at least fifty percent (50%) partnership with a private individual or entity.

(c) Unit of Local Government Defined. – For the purpose of the Travel and Tourism Capital Incentive Grant Program, a unit of local government means a county or municipality in the State.

(d) Committee. – The Travel and Tourism Grant Committee shall consist of the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and three elected local government officials. One elected local government official shall represent the Mountains and shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives. One elected local government official shall represent the Piedmont and

shall be appointed by the Governor. One elected local government official shall represent the Coastal Plain and shall be appointed by the General Assembly upon the recommendation of the President Pro Tem of the Senate. The elected local government officials may not be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The General Assembly and Governor appointees shall serve two-year terms. The Committee may act only upon a unanimous decision of its members.

It is unlawful for a member of the Committee to, within two years after the end of service on the Committee, provide services for compensation, as an employee, consultant, or otherwise, to any project that was awarded a grant under this section while the former member was serving on the Committee, or to provide services for compensation to any person or entity that contracts with the project. Violation of this subsection is a Class 1 misdemeanor.

Meetings of the Committee are subject to the open meetings requirements of Article 33C of Chapter 143 of the General Statutes. All documents of the Committee, including applications for grants, are public records governed by Chapter 132 of the General Statutes, including applicable provisions of that Chapter protecting confidential information.

(e) Application and Fee. – The owner of a qualified project may apply for a grant no later than one year after the qualified project is opened to the public. When filing an application under this section, the applicant must pay the Committee a fee of five thousand dollars ($5,000). The fee is due at the time the application is filed. The Committee shall determine the allocation of the fee imposed by this subsection among the agencies whose heads make up the Committee. The proceeds of the fee are receipts of the agency to which they are credited.

The application must contain all information required by the Committee, including a certification of the nature and cost of the tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use the grant funds. If the tourism project is the result of a public-private partnership, the grant application must set forth in detail the respective rights and obligations of the parties and the specific terms of the agreement. The application must be signed by the finance officer and the chair of the governing body of the owner.

(f) Qualification. – A qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project that the Committee determines, pursuant to a feasibility study under this section, meets all of the following conditions:

(1) At least half of the project will be financed and owned by a unit of local government in which it is located.

(2) The project will target at least thirty-five percent (35%) of its visitors from among persons who reside outside the State or more than 100 miles from the project.

(3) The project has a business plan that demonstrates a positive economic impact on the community in which the project is located.

(4) The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.

(5) The project will have a significant and positive economic impact on the community in which the project is located, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.

(6) The applicant has provided a cost-benefit analysis of the project.

(7) The applicant has provided an economic impact analysis, certified by a certified public accountant, which demonstrates the employment, gross state product, and personal income effects of the project over a 10-year period.

(8) The project will be available to the public for a minimum of 100 days per year.

(9) The project will generate at least 10 new jobs in the community in which the project is located.

(10) The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	Minimum Cost
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

(11) The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.

(12) The applicant has demonstrated by clear and convincing evidence all of the following:

a. The project will not result in unnecessary duplication of existing services.

b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.

(g) Feasibility Study. – The applicant must fund a feasibility study, certified by a certified public accountant, and coordinated solely by the Committee. The Committee shall develop a list of qualified firms to conduct the study. The Committee shall prescribe the scope of the study to cover all of the qualifications established in this section.

(h) Amount. – Subject to the maximums provided in this section, the amount of a grant with respect to a qualified project is calculated as a percentage of the total amount of the following taxes collected and retained by the State each year:

(1) The net State sales tax collected on sales by or within the qualified project, as determined by the Department of Revenue.

(2) The net privilege tax paid by the qualified project under G.S. 105-37.1, as determined by the Department of Revenue.

(i) Maximums. – The maximum term of a grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

The Committee shall set the grant percentage at the time it awards the grant. The percentage used to calculate a grant may not exceed the applicable percentage provided in the table below based on the enterprise tier, as defined in G.S. 105-129.3, in which the qualified project is located. In addition, the cumulative maximum amount of a grant may not exceed the applicable percentage of the total project cost provided in the table below based on the enterprise tier in which the qualified project is located.

Enterprise Tier	Percentage
1 and 2	35
3 and 4	30
5	25

(j) Use. – The proceeds of a grant may be used only for capital costs, including debt service, with respect to the qualified project for which the grant was awarded.

(k) Disbursement. – In order to receive grant disbursements under this section, the owner of the qualified project must provide the Department of Revenue with periodic, verified accountings of the tax collections provided in subsection (h) of this section. These reports must be made at the times and in the form prescribed by the Department of Revenue. Each report must include the name, address, and tax identification number of every taxpayer whose collections are included in the report and any other information required by the Department of Revenue.

The Department of Revenue must disburse grants awarded under this section in accordance with G.S. 105-269.16. Upon awarding a grant under this section, the Committee must provide the following information to the Department of Revenue:

(1) The name, address, and other identifying information of the owner to whom the grant was awarded.

(2) The name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project.

(3) The address and other identifying information of each facility that is part of the qualified project for which the grant was awarded.

(4) The applicable percentage and the maximum cumulative amount of the grant as determined in accordance with this section.

(5) Any other information included in the application, if required by the Department of Revenue.

(l) Reports. – The Committee must report annually to the Revenue Laws Study Committee concerning the applications made for grants and the grants awarded under this section.

(m) Cap - The maximum number of projects that may be awarded grants each fiscal year is ten."

SECTION 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.16. Travel and tourism grants.**

The Department must annually disburse the travel and tourism grants awarded under G.S. 143B-434.4. Each annual disbursement must be made by October 1 for the preceding fiscal year. The amount of each grant must be calculated in accordance with G.S. 143B-434.4 based on information provided to the Department by the owner of the qualified project. If information necessary to calculate a portion of a grant is not available, the Department must disburse only that portion for which information is available. To pay for this program, the Department must draw from State sales and use tax collections under Article 5 of this Chapter an amount equal to the grant funds disbursed and the Department's costs of administering the grants. The Department must provide the Committee an annual accounting of grant funds disbursed under this section."

SECTION 3. G.S. 150B-1(d) is amended by adding a new subdivision to read:

"(d) Exemptions from Rule Making. – Article 2A of this Chapter does not apply to the following:

....

(10) The Travel and Tourism Grant Committee in developing guidelines for the Travel and Tourism Capital Incentive Grant Program under G.S. 143B-434.4 of the General Statutes."

SECTION 4. This act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005.

HOUSE BILL 1751:
NC Tourism Development Act

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Earle, McMahan, McComas, and Barefoot
Date:	September 17, 2002		
Version:	H1751-CSLAf-88	**Analysis by:**	Martha Walston Committee Counsel

BILL ANALYSIS: House Bill 1751 creates the Travel and Tourism Capital Incentive Grant Program. The act becomes effective January 1, 2003, and expires for grant applications filed on or after July 1, 2005. The new proposed committee substitute makes a number of clarifying amendments and one substantive amendment:

- Clarifies that an owner of a qualified project is a unit of local government that owns the project in whole or at least 50% partnership with a private individual or entity. (Page 1, lines 18 and 19)
- Increases the membership of the Travel and Tourism Grant Committee to include an elected local government official representing the Piedmont and appointed by the Governor. There will now be three elected local government officials representing all three geographic areas of the State. (Page 1, lines 25 and 28, and Page 2, line 1)
- Clarifies that the applicant (was taxpayer) for a grant must pay the application fee. The applicant would be the owner of the project. (Page 2, line 21)
- Clarifies that a qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project. (Page 2, lines 34 and 35)
- Clarifies in the list of qualifications that the project will have a positive economic impact on the community in which the project is located and will generate at least 10 new jobs in the community (was local area) in which the project is located. (Page 2, lines 43 and 44, and page 3, lines 3 and 4).
- Clarifies that the economic impact analysis and feasibility study must be certified by a certified public accountant. (Page 3, lines 10 and 11, and lines 33 and 34)
- Clarifies that the Committee must provide information to the Department of Revenue that includes the name and address of any lessee or individual or entity who has entered into a contract with the owner of the qualified project. (Page 4, line 29).

At the September 5th House Finance Meeting the following two amendments were adopted:

1. **The applicant, in the feasibility study, must certify that the project will not be created, expanded, or renovated unless the applicant is awarded the grant.**
2. **No more than $20,000,000 in grants shall be awarded each fiscal year.**

Grant recipient - Grants may be awarded to a unit of local government that owns a qualified project in whole or in at least 50% partnership with a private individual or entity. Grant proceeds may not be distributed to any private individual or entity. A "unit of local government" is defined in the bill as a county or municipality in the State.

Qualified project - A qualified project is a newly created travel and tourism project or expansion or renovation of a travel and tourism project that the Travel and Tourism Grant Committee determines, pursuant to a feasibility study funded by the applicant, meets the following conditions.

1. At least half of the project will be financed and owned by a unit of local government in which it is located
2. The project will target at least 35% of its visitors from among persons who reside outside the State or more than 100 miles from the project.
3. The project has a business plan that demonstrates a positive economic impact on the community in which the project is located.
4. The applicant has provided impact projections regarding estimated State and local tax revenues with respect to the project.
5. The project will have a significant and positive economic impact on the community in which the project is located, considering among other factors, the extent to which the tourism project will compete directly with existing tourism attractions in the area and the amount by which tax revenues from the tourism project will exceed the amount of the grant provided.
6. The applicant has provided a cost-benefit analysis of the project.
7. The applicant has provided an economic impact analysis, certified by a CPA, which demonstrates the employment, gross state product, and personal income effects of the project over a 10-year period.
8. The project will be available to the public for a minimum of 100 days per year.
9. The project will generate at least 10 new jobs in the community in which the project is located.
10. The project will have the following minimum cost based on the enterprise tier in which it is located:

Enterprise Tier	**Minimum Cost**
1 and 2	$ 1,000,000
3 and 4	$10,000,000
5	$20,000,000

11. The governing body of the unit of local government has passed a resolution stating the need for and positive economic impact and enhancement of travel and tourism revenues from the project.
12. The applicant has demonstrated by clear and convincing evidence all of the following
    a. The project will not result in unnecessary duplication of existing services.
    b. The project will generate new visitors to the area rather than drawing visitors away from other existing tourism attractions.
13. The applicant has certified that the project will not be created, expanded, or renovated

unless the applicant is awarded a grant. (Amendment adopted 9/5/02)

Amount of the grant - The amount of the grant is determined by multiplying the sum of the total amount of sales taxes collected on sales by or within the qualified project and the net privilege taxes paid by the qualifying project times an enterprise tier percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amount of the total project cost that can be funded through the program.

Maximum. - The maximum term of the grant is ten years. No project may receive any grant proceeds for a year that is more than ten years beyond the date of the initial grant award.

Use of grant proceeds. - The proceeds of the grant may be used only for capital costs, including debt service, with respect to the qualified project.

Cap on number of projects - No more than 10 projects may be awarded grants each fiscal year. No more than $20,000,000 in grants shall be awarded each fiscal year. (amendment adopted 9/5/02)

Travel and Tourism Grant Committee - The Travel and Tourism Grant Committee shall consist of six members: the Secretary of Commerce, the Secretary of Revenue, the Director of the Office of State Budget and Management, and three elected local government officials who will serve two-year terms. The Speaker of the House will appoint an official who represents the Mountains, the President Pro Tem of the Senate will appoint an official who represents the Coastal Plain, and the Governor will appoint an official who represents the Piedmont. The elected local government officials may not be associated with or employed by the travel and tourism industry or an entertainment enterprise, or be in any contractual relationship regarding the qualified project. The Committee may only act upon unanimous consent. The Committee is subject to the open meetings law and the public records law. Members of the Committee are forbidden to work for a business that receives a grant under this program, or to provide services for compensation to any person or entity who contracts with the project, for a period of two years after the member's service on the Committee ends.

Fees. - Each applicant must pay the Committee a $5,000 application fee.

Information provided by the Committee. Upon awarding a grant, the Committee must provide the Department of Revenue with specific information.

Disbursement of grants by the Department of Revenue - The Department of Revenue must annually disburse the grants by October 1 for the preceding fiscal year, based on information provided to the Department by the owner of the qualified project. In order to pay for the Grant Program, the Department will draw from State sales and use tax collections an amount equal to the grant funds disbursed and the Department's costs of administering the grants.

Exemption from rule making. - The Travel and Tourism Grant Committee is exempt from the rule making provisions under the Administrative Procedure Act when developing guidelines for the Grant Program.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1751 PCS with approved amendments

DRAFT

SHORT TITLE: NC Tourism Development Act

SPONSOR(S): Representatives Earle, McMahan, McComas, and Barefoot

FISCAL IMPACT

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

	(Millions)				
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund					
Sales Tax	0	(20)	(40)	(60)	(60)
EXPENDITURES					
Travel and Tourism Grant Committee	* See Assumptions and Methodology *				
Dept. of Revenue	* See Assumptions and Methodology *				
POSITIONS:					
Department of Revenue	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Travel and Tourism Grant Committee, NC Department of Revenue, and local governments.

EFFECTIVE DATE: January 1, 2003

BILL SUMMARY: The bill creates the Travel and Tourism Capital Incentive Grant program to be administered by the Travel and Tourism Grant Committee. The program offers grants to counties and municipalities who own "qualifying projects" that meet the following criteria: 1) the project is financed and owned (in whole or at least in 50% partnership) by the unit of local government in which it is located, 2) the project will target 35% or more of its visitors from at least 100 miles away or out of state, 3) the project has a business plan that indicates that project will be profitable, 4) the applicant provides tax impact projections, 5) the project will have a significant and positive impact on the community, 6) the project will be open at least 100 days per year, 7) the project will generate at least ten new jobs in the local area, 8) the projects will meet a minimum cost criteria based on the North Carolina enterprise tier in which it is located, 9) the governing body of the local government passes a resolution stating the need for, positive economic impact of, and the enhanced travel and tourism opportunities created by the project, 10) the applicant demonstrates that the project will not duplicate services and will draw new visitors to the area, and 11) the applicant guarantees, in writing, that the project would not

happen "but for" this grant. Grant funds can be used to fund new projects or the renovation and expansion of existing facilities. The grant amount is determined by multiplying the total amount of sales taxes collected on sales by or within the qualified program and the net privilege taxes paid by the qualifying project by an enterprise tier based percentage, with maximum percentages outlined in the bill (35% tier 1 and 2, 30% tier 3 and 4, and 25% for tier 5). These same percentages apply to the maximum amounts of the total project cost that can be funded through this grant program. The Travel and Tourism Grant Committee is charged with determining if all project criteria are met and the percentages used to calculate the grant amount. Grant funds can only be used for capital costs, including debt service. To receive a grant disbursement, the project owner must provide the Department of Revenue with periodic, verified accounting of the tax collections. Annual disbursements based on this information must be made by the Department of Revenue by October 1 of each year and should reflect tax collections from that project for the previous fiscal year. The Department is only required to distribute funds based on data provided by the owner. If appropriate data is not provided to justify a complete payment, a partial payment can be made to reflect the information provided. Applicants must fund a feasibility study coordinated and directed by the Travel and Tourism Grant Committee and pay a $5,000 application fee. The funds to pay for the grants and the associated departmental costs are drawn from State sales and use tax revenues. The grant application period for the bill sunsets July 1, 2005, although payments for grants authorized before that date will continue to be made up to ten years after the initial award. Only ten (10) grants can be awarded per year. Annual awards are limited to $20 million.

ASSUMPTIONS AND METHODOLOGY:

Impact on Revenue

The bill effectively earmarks a proportion of state tax revenue drawn from a particular qualifying project and returns that funding to the institution to fund capital costs and debt service. The proportion returned varies by location and other factors. The bill would allow funding for ten projects a year, with a maximum of thirty grants awarded before the July 1, 2005 sunset. At present Fiscal Research is aware of several potential projects that have already reach the planning stages, primarily arenas, convention centers and athletic facilities, that could easily qualify for these grants, although local government officials indicate that many local units would likely be interested applying for these grants. Fiscal Research is also not aware of any other state that uses a similar funding mechanism, so no data is available from other states to suggest a fiscal cost. (Kentucky has a state sales tax incentive program for tourism development, which has funded seven (7) projects to date. However, because of substantial differences in the Kentucky plan and this bill, that state's experience cannot be used as a proxy for estimating purposes). Because there is no good data on the type, size and location of qualifying projects or potentially qualifying projects, the fiscal note assumes the committee awards the maximum annual amount of $20 million. Because the bill allows three grant cycle before the sunset, the maximum annual impact is reached in 2004-05 of $60 million ($20 million from each year of awards). Because all economic activity, in total, is considered in determining the state's baseline revenue projections, all grants awarded under this program would be shown as a loss of state revenue. Depending on the type of projects that qualify for the program, the loss could be substantial, as there is no cap on the revenue invested in the program, or it could be more limited if few facilities are created or participate. However, none of that loss would appear in FY 2002-03, as the first payment would not be made for any project until October 2003.

Impact on Expenditures

Travel and Tourism Grant Committee: The bill charges the Travel and Tourism Grant Committee (the Committee) with carrying out the following activities in order to administer the grant program:

1. Adopt rules for the administration of the program.

2. Coordinate and direct feasibility studies funded by the applicants. This coordination function includes selection by the Department of qualified, independent consultants and prescription of the scope of each study.

3. Analyze applications to ensure they contain all necessary information regarding the nature and cost of the proposed tourism project, the estimated revenues to be generated by the project, the estimated economic benefit to the community, and the purposes for which the applicant will use grant funds.

Each of these activities will involve a cost to the Committee. The bill allows the Committee itself to determine how the fee revenue and associated responsibilities will be distributed. Since the bill does not specify the financial structure of the Committee, how the Committee will operate, or how the Committee will utilize the $5,000 fee per application, it is not possible to estimate the fiscal impact on the Committee.

Department of Revenue: According to the Department of Revenue, the anticipated responsibilities from the enactment of the bill will not justify any positions being assigned to handle the work and, therefore, no employee costs will be incurred. There will only be very minimal costs for printing and mailings of forms and possibly some other minor administrative costs. The Department's assumption is that there will be a relatively small number of projects that will qualify, at least initially. Therefore, on the basis of this assumption, taxes eligible for grants will not be generated until a project is completed and business performed in the project. The first fiscal year for which grants could be issued would most likely be FY 2003-2004. This should provide the department with ample time to get procedures in place.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Linda Struyk Millsaps, Adam Levinson, and Michele Nelson

APPROVED BY:
DATE: September 11, 2002

MINUTES
HOUSE FINANCE COMMITTEE

September 19, 2002

The House Committee on Finance met on Thursday, September 19, 2002 in Room 544 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairmen Allen, Buchanan, Luebke and Wainwright, Vice Chairs Hill and Jarrell, and Representatives Alexander, Cox, Decker, Eddins, Edwards, Gibson,, Hurley, Johnson, McCombs, McComas, McMahan, Pope, Rayfield, Weiss, Willingham, and Womble. The following Sergeant-at-Arms staff was present: Bob Fowler, Bill Freeman, Dusty Rhodes and Walter Spell. Staff including Richard Bostic, Trina Griffin, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and called upon Representative McComas, bill sponsor of HB 1707 Proposed Committee Substitute A BILL TO BE ENTITLED AN ACT TO PROVIDE TOURISM DEVELOPMENT FOR THE NEW HANOVER BEACH TOWNS, TO PROVIDE FOR THE ESTABLISHMENT OF A TOURISM DEVELOPMENT AUTHORITY, TO CONFORM ADMINISTRATIVE PROVISIONS OF THE NEW HANOVER COUNTY LAW TO GENERAL LAW, AND TO PROHIBIT A CONVENTION CENTER IN NEW HANOVER COUNTY FROM ENTERING INTO A CONTRACT WITH A HOTEL REQUIRING THE HOTEL TO PAY FEES OR COMMISSIONS TO THE CONVENTION CENTER BASED ON ACCOMMODATIONS PROVIDED TO INDIVIDUALS ATTENDING CONVENTION CENTER FUNCTIONS, to explain the bill. A motion was made by Representative Womble to adopt HB 1707 Proposed Committee Substitute for discussion. After a brief summary and discussion of the bill, Representative Gibson made a motion to give HB 1707 Proposed Committee Substitute a favorable report unfavorable to the original bill. The motion carried. A copy of the bill, and summary is attached.

Representative Haire, bill sponsor HB 1638 Proposed Committee Substitute A BILL TO BE ENTITLED AN ACT AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE ALE DIVISION WHEN INVESTIGATION ABC PERMIT APPLICANTS, LOCAL LAW-ENFORCEMENT AGENCIES ISSUING PRECIOUS METAL DEALER PERMITS, THE PRIVATE PROTECTIVE SERVICES BOARD, THE ALARM SYSTEMS LICENSING BOARD, THE BOARD OF LAW EXAMINERS, THE MEDICAL BOARD, THE STATE BOARD OF DENTAL EXAMINERS, THE BOARD OF PHARMACY, THE BOARD OF MORTUARY SCIENCE, THE REAL ESTATE COMMISSION, THE COMMISSIONER OF LABOR WHEN INVESTIGATING PRIVATE PERSONNEL SERVICE LICENSE APPLICANTS, THE STRUCTURAL PEST CONTROL COMMITTEE, AND CITIES HEN INVESTIGATING TAXI LICENSE APPLICANTS AND TO CHARGE A FEE FOR CONDUCTING THE CHECKS, AND TO CONFORM SEX OFFENDER LAWS TO FEDERAL REQUIREMENTS, was recognized by Chairman Buchanan to explain the bill. Representative Rayfield was recognized for a motion to adopt HB 1638 Proposed Committee Substitute for discussion. Representative Haire explained that the PCS for HB 1638 amends various statutes regarding criminal history checks to ensure that national criminal history checks will be allowed pursuant to those statues after December 31, 2002, and allows the SBI to charge a fee to the applicant for conducting the checks. The bill also amends the sex offender registration statutes to conform them to the Campus Sex Crimes Prevention Act. Representative Hurley asked Representative Haire if this bill included the Locksmith Licensing Board changes that were made last year. At the request of Representative Haire, Susan Sitze, Staff Attorney, responded to Representative Hurley's question saying she was not certain and would need additional time to

answer his question. Representative Hurley suggested that if needed he would amend the bill on the floor. Representative Luebke made a motion to give HB 1638 Proposed Committee Substitute a favorable report, unfavorable to the original bill. The motion carried. Representative Haire thanked Susan Sitze for all her work on this bill. A copy of the bill, summary and fiscal note is attached.

SB 1268 Proposed House Committee Substitute A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF MONROE TO USE WHEEL LOCKS ON ILLEGALLY PARKED VEHICLES, TO ALLOW THE TOWN OF NORWOOD TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE IT, AND TO ANNEX NONCONTIGUOUS TERRITORY TO THE TOWN OF MOUNT GILEAD, was the next bill on the agenda for discussion. Representative Gibson was recognized to explain the bill. Representative Womble was recognized for a motion to adopt SB 1268 Proposed Committee Substitute for discussion. After a brief explanation of the bill, Representative Womble asked if there was any opposition to the bill. Representative Gibson answered there was no opposition to his knowledge. Representative Womble made a motion to give SB 1268 Proposed Committee Substitute a favorable report, unfavorable to the original report. The motion passed. A copy of the bill and summary is attached.

Chairman Buchanan recognized Representative Wright, sponsor of HB 1720 Proposed Committee Substitute A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, to explain the bill. Representative Womble made a motion to adopt HB 1720 Proposed Committee Substitute for discussion. After a brief explanation of the bill, Representative Womble told the committee that this bill had been reworked several times and there was no opposition from the delegation and made a motion at the appropriate time to give this bill a favorable report, unfavorable to the original bill. Representative Jarrell spoke in support of the bill stating the City of Wilmington is just asking to levy a 3% occupancy tax in order to build a convention center and personally feels the State would benefit since our State does not have a large enough convention center big enough in this State. Representative McComas said HB 1707 establishes a Tourism Development Authority stating that these bills go together. Representative Wright said if a TDA is created then this would be enacted but the county still has the final say. Representative Womble's motion to adopt HB 1720 Proposed Committee Substitute passed. A copy of the bill, summary and fiscal note is attached.

Chairman Buchanan recognized Co-Chair Wainwright to report to the Committee that HB 1630, NASCAR Driver Theme Special Plates, was given a favorable report by the Subcommittee and said this bill would be heard next week.

The meeting adjourned at 8:55 a.m.

Respectfully submitted,

Charles Buchanan
Representative Charles Buchanan
Chairman

Glenda O. Jones
Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

September 19, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD

SB 1268	Monroe Wheel Locks—Representative Gibson
HB 1638	Private Protective Services Criminal History Check—Representative Haire
HB 1720	Wilmington Occupancy Tax—Representative Wright
HB 1707	Beach Towns Room Tax—Representative McComas

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE FINANCE — Name of Committee

SEPTEMBER 19, 2002 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wilms	NCHBA
Calvin Peck	Town of Carolina Beach
Andy Watry	NC Med Board
Mark Ezzell	GCC
Mark Creason	Capitol Group
Candy Lawler	EGHS
Jim Hobbs	NCHLA
Ken Melton	Alley Associates Inc.
Jim Blackburn	NC Association of County Commissioners
Mark Sellinger	Wilco Hamp-Ons
Angie Harris	Maupin Taylor & Ellis

VISITOR REGISTRATION SHEET

HOUSE FINANCE — SEPTEMBER 19, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Motley	GOV OFFICE
Eddie Caldwell	NCH+LA

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1707 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE TOWNS OF CAROLINA BEACH, KURE BEACH, AND WRIGHTSVILLE BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, IF APPROVED BY THE VOTERS.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1707
PROPOSED COMMITTEE SUBSTITUTE H1707-PCS8380-LCx-110

Short Title: New Hanover Beach Towns Tourism Act. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TOURISM DEVELOPMENT FOR THE NEW HANOVER COUNTY BEACH TOWNS, TO PROVIDE FOR THE ESTABLISHMENT OF A TOURISM DEVELOPMENT AUTHORITY, TO CONFORM ADMINISTRATIVE PROVISIONS OF THE NEW HANOVER COUNTY LAW TO GENERAL LAW, AND TO PROHIBIT A CONVENTION CENTER IN NEW HANOVER COUNTY FROM ENTERING INTO A CONTRACT WITH A HOTEL REQUIRING THE HOTEL TO PAY FEES OR COMMISSIONS TO THE CONVENTION CENTER BASED ON ACCOMMODATIONS PROVIDED TO INDIVIDUALS ATTENDING CONVENTION CENTER FUNCTIONS.

The General Assembly of North Carolina enacts:

NEW HANOVER COUNTY BEACH TOWNS TOURISM DEVELOPMENT ACT

SECTION 1.(a) This section applies only to the towns of Carolina Beach, Kure Beach, and Wrightsville Beach.

SECTION 1.(b) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the governing body of a beach town may, by resolution, levy a local occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – New Hanover County shall collect and administer on behalf of each beach town the tax the town levies under this section. Except as otherwise provided in this section, a tax levied under this section shall be

levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied by each beach town under this section to the Tourism Development Authority for deposit to a separate account for that beach town. The Authority shall use at least one-half of the funds in each beach town account to promote travel and tourism in that beach town and shall use the remainder in each beach town account for tourism-related expenditures in that beach town. Before spending any funds in a beach town account for promoting travel and tourism or for tourism-related expenditures, the Authority must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority or Authority. – The Cape Fear Coast Convention and Visitors Bureau created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, ~~and Wilkesboro,~~Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

MODIFY NEW HANOVER COUNTY ADMINISTRATIVE PROVISIONS

SECTION 3. Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section 32(b) of Chapter 908 of the 1983 Session Laws.

SECTION 4. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, and Section 3 of this act, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-Percent Tax. – The New Hanover County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~"Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied under this Part shall be~~ levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of any accommodations within the county that are subject to ~~room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%)~~ sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

(b) Additional One-Percent Tax. – In addition to the tax authorized by ~~Sections 31 and 32 of this Part,~~ subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections.~~that subsection. The levy, collection, administration, and repeal of the tax authorized by this ~~section,~~ subsection, and the use of tax revenue from a tax levied under this ~~section,~~subsection, shall be in accordance with Sections 31 through ~~36~~ 35 of this Part. New Hanover County may not levy a tax under this ~~section~~ subsection unless it also levies a tax under ~~Sections 31 and 32 of this Part.~~ subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

(1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or

otherwise permitted by all appropriate federal and State agencies.

b. The nonfederal share of the cost required to construct these projects.

c. The costs associated with providing enhanced public beach access.

d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make~~

~~and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed six months, or both.~~

~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or added to the tax levied under this Part, as prescribed in subsections (b) and (c) above, the Board of Commissioners of New Hanover County, upon petition of the taxpayer or his agent, may compromise, settle, or adjust the county's claim for the penalties imposed.~~

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: five ex officio members or their designees and 10 additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in the member's place an individual who is actively involved in promoting travel and tourism in the local community the member represents or who owns or manages a lodging facility in the local community the member represents.

a. The chair of the board of county commissioners.

b. The mayor of the City of Wilmington.

c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.

a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.

b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.

c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.

d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.

e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.

f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.

g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

~~Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 35. Disposition of Taxes Collected. ~~(a)~~ – New Hanover County shall distribute the net proceeds of the occupancy ~~tax~~ taxes levied under Section 31 of this Part as ~~follows:~~provided in this section:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. ~~159-30; and~~ 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the ~~county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed.~~Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

~~Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.~~

~~The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State.~~

~~"Sec. 36. Repeal of Levy. (a) The board of commissioners may by resolution repeal the levy of the room occupancy tax in new Hanover County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund~~

~~of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~"

SECTION 5. G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction,

nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

LIMITATION ON NEW HANOVER COUNTY CONVENTION CENTERS

SECTION 6. G.S. 160A-489 reads as rewritten:

"**§ 160A-489. Auditoriums, coliseums, and convention centers.**

(a) Any city is authorized to establish and support public auditoriums, coliseums, and convention centers. As used in this section, "support" includes but is not limited to: acquisition, construction, and renovation of buildings and acquisition of the necessary land and other property therefor; purchase of equipment; compensation of personnel; and all operating and maintenance expenses of the facility. For the purposes set forth in this section, a city may appropriate funds not otherwise limited as to use by law.

(b) A convention center, or its agents, that is funded in whole or in part by occupancy tax proceeds may not enter into a contract with a hotel or lodging facility that requires the hotel or lodging facility to pay a fee, penalty, commission, or other charge to the convention center based on accommodations provided to individuals attending convention center functions. A convention center may not discriminate against a hotel or lodging facility that provides accommodations to individuals attending convention center functions based on the payment or nonpayment of fees, penalties, commissions, or other charges to the convention center."

SECTION 7. Section 6 of this act applies only to New Hanover County and the municipalities in New Hanover County.

EFFECTIVE DATE

SECTION 8. Sections 6, 7, and 8, and the amendments made by this act to Section 34 of Chapter 908 of the 1983 Session Laws, as amended, are effective when this act becomes law. The remainder of this act becomes effective February 1, 2003.

HOUSE BILL 1707:
New Hanover Beach Towns Tourism Act

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. McComas
Date:	September 18, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel
	H1707-CSLCx-110 [v.6]		

SUMMARY: ***The proposed committee substitute for House Bill 1707, given a favorable report by the Occupancy Tax Subcommittee, does the following things:***

- ***It authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax once the county has established a Tourism Development Authority. One-half of the proceeds are to be used for tourism promotion and the other half for tourism-related expenditures.***
- ***It requires the county to establish a Tourism Development Authority no later than February 1, 2003, and it specifies the membership of the Authority.***
- ***It conforms the administrative provisions of New Hanover County's current occupancy tax legislation to the uniform provisions concerning levy, administration, collection, repeal, and penalties.***
- ***It prohibits a convention center that is funded in whole or in part by occupancy tax proceeds from entering into a contract with a hotel that requires the hotel to pay a fee, penalty, commission, or other charge to the convention center based on accommodations furnished to individuals attending convention center functions. This provision only applies to convention centers in New Hanover County and the municipalities in New Hanover County.***

The section requiring the establishment of a Tourism Development Authority and the section regarding convention centers become effective when the act becomes law. The reminder of the act becomes effective February 1, 2003.

CURRENT LAW: Currently, the towns of Carolina Beach, Kure Beach, and Wrightsville Beach do not have authority to levy an occupancy tax. However, they do receive a portion of the occupancy tax proceeds levied by the county. Since 1985, New Hanover has had the authority to levy a 3% occupancy tax. Sixty percent (60%) of the total proceeds are deposited into a special fund to be used to control beach erosion. The remainder is distributed among the county and the municipalities in accordance with the method by which the 1% local sales and use taxes levied in the county are distributed and is used to promote travel and tourism.[1]

BILL ANALYSIS: The proposed committee substitute for House Bill 1707 has three parts. The first part affects the beach towns only, the second part modifies the county's current authority to levy a 3% occupancy tax, and the third part prohibits a convention center in New Hanover County from entering into a contract with a hotel requiring the hotel to pay fees or commissions to the convention center based on accommodations furnished to convention participants.

[1] New Hanover uses an ad valorem method of local sales and use tax distribution.

I. Beach Towns Tourism Development Act

Rate – The bill authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax once the county has established a Tourism Development Authority.

Administration – The county would collect the proceeds for each beach town and remit the funds, on a quarterly basis, to the TDA. The TDA will distribute the funds and must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

Use – 50% to promote travel and tourism; 50% for tourism-related expenditures.

II. Modify New Hanover County Administrative Provisions

Creation of a TDA – Currently, the county has a convention and visitors bureau (CVB), which was established without any authorizing legislation.

- The PCS requires the county to create the Cape Fear Coast Convention and Visitors Bureau, which shall act as a tourism development authority, as soon as practicable before February 1, 2003. Upon its creation, the county must transfer all of the assets of the convention and visitors bureau to the Authority.
- The TDA would consist of 15 voting members, with 5 *ex officio* members and 10 additional members appointed by the board of commissioners. The eight additional members would consist of 7 owners/operators of lodgings (hotels, bed and breakfast, and rental properties), 2 people actively involved in promoting tourism in the county, and 1 owner/operator of a restaurant.
- The intent of this legislation is for the current CVB to be converted into a Tourism Development Authority, but retain its current name as the "Cape Fear Coast Convention and Visitors Bureau."

Use –

- 60% - Under current law, New Hanover uses 60% of its occupancy tax proceeds to control beach erosion. The PCS changes the term to "beach nourishment," a defined term. These funds would continue to be deposited into a special account administered by the county.
- 40% - Under current law, the remaining 40% is distributed among the county and the municipalities and used to promote travel and tourism. Under the PCS, the use would remain the same but the funds would be remitted to and distributed by the TDA.

Uniform Administrative Provisions – It conforms the provisions regarding the levy, administration, collection and repeal of the county tax to the statutory provisions in G.S. 153A-155. Uniform statutory penalties also apply.

III. Limitation on New Hanover Convention Centers

- This section applies only to New Hanover County and municipalities in New Hanover County.
- The bill prohibits a convention center from entering into a contract with a hotel or lodging facility that requires the hotel or lodging facility to pay a fee, penalty, commission, or other charge to the convention center based on accommodations furnished to individuals attending convention center functions.
- It also prohibits a convention center from discriminating against a hotel or lodging facility that provides accommodations to individuals attending convention center functions based on the payment or nonpayment of fees, penalties, commissions, or other charges to the convention center.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE.**

☒ Committee Substitute for
H.B. 1638 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE ALE DIVISION WHEN INVESTIGATING ABC PERMIT APLLICANTS, LOCAL LAW-ENFORCEMENT AGENCIES ISSUING PRECIOUS METAL DEALER PERMITS, THE PRIVATE PROTECTIVE SERVICES BOARD, THE ALARM SYSTEMS LICENSING BOARD, THE BOARD OF LAW EXAMINERS, THE MEDICAL BOARD, THE STATE BOARD OF DENTAL EXAMINERS, THE BOARD OF PHARMACY, THE BOARD OF MORTUARY SCIENCE, THE REAL ESTATE COMMISSION, THE COMMISSIONER OF LABOR WHEN INVESTIGATING PRIVATE PERSONNEL SERVICE LICENSE APPLICANTS, THE STRUCTURAL PEST CONTROL COMMITTEE, AND CITIES WHEN INVESTIGATING TAXI LICENSE APPLICANTS AND TO CHARGE A FEE FOR CONDUCTING THE CHECKS.

☐ 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 (# 2), ☒ which changes the title, unfavorable as to ~~(the original bill)~~ (Committee Substitute Bill # 1), ~~(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)

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

Session 2001

House Bill 1638, Part II.

Sex Offender Registration

Bill Primary Sponsor(s):	Rep. Haire	H1638-PCS4309-SA-50
Relevant Federal Law:	*P.L. 106-386 Sec. 1601*	
☒ Required by or Necessary for Compliance with Federal Law		☐ Exceeds Federal Law
☒ Federal Funds Conditioned upon Passage of Law		☒ Implements Federal Law

SUMMARY OF BILL PROVISIONS ALLEGEDLY REQUIRED BY FEDERAL LEGISLATION

In October 2000, the President signed the Victims of Trafficking and Violence Protection Act (P.L. 106-386) into law. Part of that Act was designated as the Campus Sex Crimes Prevention Act which added an additional requirement to State sex offender registry programs required under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program.

The Campus Sex Crimes Prevention Act requires any person required to register under a State sex offender registration program to notify the State concerning each institution of higher education in the State at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution. The failure of a registrant to notify the State concerning enrollment or employment at an institution of higher education or the termination of such enrollment or employment constitutes a failure to register or keep such registration current and must be subject to criminal penalties. State procedures must also ensure that information concerning a registrant enrolled or working at an institution of higher education is promptly made available to a law enforcement agency having jurisdiction where the institution is located, and entered into the appropriate State records or data system.

Failure to comply with the requirements of the Campus Sex Crimes Prevention Act by October 27, 2002 will result in a 10% reduction in Byrne Formula Grant money.

COMPLIANCE CONSIDERATIONS

Part II of House Bill 1638 would bring North Carolina into compliance with the requirements of the Campus Sex Crimes Prevention Act. This part requires a registered sex offender to notify the sheriff at registration if the person required to register is a student or employee of an institution of higher education, or expects to become a student or employee of an institution of higher education within one year of registering. If so, the offender must provide the name and address of the education institution at which the offender is a student or employed, or expects to be a student or employed. At any time, if a person required to register changes their academic status or employment status, either by becoming a student or employee of an institution of higher education, or by terminating enrollment or employment at an institution of higher education, they shall notify the sheriff not later than the tenth day after the change in status. Failure to comply with these provisions is a violation of G.S. 14-208.11, a Class F felony.

This part also require the Division of Criminal Statistics of the Department of Justice to notify the appropriate law enforcement unit at an institution of higher education as soon as possible upon receipt of registration information or notice of a change of academic or educational employment status. If an institution of higher education does not have a law enforcement unit, then the Division shall provide the information to the local law enforcement agency that has jurisdiction for the campus.

REVIEW AND APPROVAL

Prepared By: Susan L. Sitze — **Date:** 9-19-02

Susan L. Sitze
Staff Attorney

Approved By: Terrence D. Sullivan — **Date:** 9/19/02

Terrence D. Sullivan
Director of Research

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1638

Committee Substitute Favorable 8/27/02

PROPOSED COMMITTEE SUBSTITUTE H1638-PCS4309-SA-50

Short Title: Crim. Hist. Check/Conform Sex Off. Reg. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE CRIMINAL RECORD CHECKS TO THE ALE DIVISION WHEN INVESTIGATING ABC PERMIT APPLICANTS, LOCAL LAW-ENFORCEMENT AGENCIES ISSUING PRECIOUS METAL DEALER PERMITS, THE PRIVATE PROTECTIVE SERVICES BOARD, THE ALARM SYSTEMS LICENSING BOARD, THE BOARD OF LAW EXAMINERS, THE MEDICAL BOARD, THE STATE BOARD OF DENTAL EXAMINERS, THE BOARD OF PHARMACY, THE BOARD OF MORTUARY SCIENCE, THE REAL ESTATE COMMISSION, THE COMMISSIONER OF LABOR WHEN INVESTIGATING PRIVATE PERSONNEL SERVICE LICENSE APPLICANTS, THE STRUCTURAL PEST CONTROL COMMITTEE, AND CITIES WHEN INVESTIGATING TAXI LICENSE APPLICANTS AND TO CHARGE A FEE FOR CONDUCTING THE CHECKS, AND TO CONFORM SEX OFFENDER LAWS TO FEDERAL REQUIREMENTS.

The General Assembly of North Carolina enacts:

PART I. CRIMINAL HISTORY BACKGROUND CHECKS

SECTION 1. G.S. 18B-902 reads as rewritten:

"**§ 18B-902. Application for permit; fees.**

(a) Form. – An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. ~~The application shall be signed and sworn to by each~~Each person required to qualify under ~~G.S. 18B-900(c).~~G.S. 18B-900(c) shall sign and swear to the application and shall submit a full set of fingerprints with the application.

(b) Investigation. – Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local

ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

The Department of Justice may provide a criminal record check to the ALE Division for a person who has applied for a permit through the Commission. The ALE Division shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The ALE Division and the Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(c) False Information. – Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) Fees. – An application for an ABC permit shall be accompanied by payment of the following application fee:

(1) On-premises malt beverage permit – $400.00.
(2) Off-premises malt beverage permit – $400.00.
(3) On-premises unfortified wine permit – $400.00.
(4) Off-premises unfortified wine permit – $400.00.
(5) On-premises fortified wine permit – $400.00.
(6) Off-premises fortified wine permit – $400.00.
(7) Brown-bagging permit – $400.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be $200.00.
(8) Special occasion permit – $400.00.
(9) Limited special occasion permit – $50.00.
(10) Mixed beverages permit – $1,000.
(11) Culinary permit – $200.00.
(12) Unfortified winery permit – $300.00.
(13) Fortified winery permit – $300.00.
(14) Limited winery permit – $300.00.
(15) Brewery permit – $300.00.
(16) Distillery permit – $300.00.
(17) Fuel alcohol permit – $100.00.
(18) Wine importer permit – $300.00.
(19) Wine wholesaler permit – $300.00.
(20) Malt beverage importer permit – $300.00.

(21) Malt beverage wholesaler permit – $300.00.
(22) Bottler permit – $300.00.
(23) Salesman permit – $100.00.
(24) Vendor representative permit – $50.00.
(25) Nonresident malt beverage vendor permit – $100.00.
(26) Nonresident wine vendor permit – $100.00.
(27) Any special one-time permit under G.S. 18B-1002 – $50.00.
(28) Winery special event permit – $200.00.
(29) Mixed beverages catering permit – $200.00.
(30) Guest room cabinet permit – $1,000.
(31) Liquor importer/bottler permit – $500.00.
(32) Cider and vinegar manufacturer permit – $200.00.
(33) Brew on premises permit – $400.00.
(34) Wine producer permit – $300.00.
(35) Wine tasting permit – $100.00.

(e) Repealed by Session Laws 1998-95, s. 29, effective May 1, 1999.

(f) Fee Not Refundable. – The fee required by subsection (d) shall not be refunded.

(g) Fees to Treasurer. – All fees collected by the Commission under this or any other section of this Chapter shall be remitted to the State Treasurer for the General Fund."

SECTION 2. G.S. 66-165 reads as rewritten:

"**§ 66-165. Permits required.**

(a) Except as provided in subsection (c), it shall be unlawful for any person to engage as a dealer in the business of purchasing precious metals either as a separate business or in connection with other business operations without first obtaining a permit for the business from the local law-enforcement agency. The form of the permit and application therefor shall be as approved by the Department of Crime Control and Public Safety. The application shall be given under oath and shall be notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit. A separate permit shall be issued for each location, place, or premises within the jurisdiction of the local law-enforcement agency which is used for the conduction of a precious metals business, and each permit shall designate the location, place or premises to which it applies. Such business shall not be conducted in any other place than that designated in the permit, and no business shall be conducted in a mobile home, trailer, camper, or other vehicle, or structure not permanently affixed to the ground or in any room customarily used for lodging in any hotel, motel, tourist court, or tourist home as defined in G.S. 105-61. The permit shall be posted in a prominent place on the designated premises. Permits shall be valid for a period of 12 months from the date issued and may be renewed without a waiting period upon filing of an application and payment of the annual fee. The annual fee for each dealer's permits within each jurisdiction shall be ten dollars ($10.00) to provide for the administrative costs of the local law-enforcement agency, including purchase of required forms. The fee shall not be refundable even if the permits are denied or later

suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

Any dealer applying to the local law-enforcement agency for a permit shall furnish the local law-enforcement agency with the following information:

(1) His full name, and any other names used by the applicant during the preceding five years. In the case of a partnership, association, or corporation, the applicant shall list any partnership, association, or corporate names used during the preceding five years;

(2) Current address, and all addresses used by the applicant during the preceding five years;

(3) Physical description;

(4) Age;

(5) Driver's license number, if any, and state of issuance;

(6) Recent photograph;

(7) Record of felony ~~convictions; and~~convictions;

(8) Record of other convictions during the preceding five ~~years.~~years; and

(9) A full set of fingerprints of the applicant.

If the applicant for a dealer's permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a dealer's permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

The Department of Justice may provide a criminal record check to the local law-enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State

law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

(b) Every employee engaged in the precious metal business shall, within two days of being so engaged, register his name and address with the local law-enforcement agency and have his photograph taken by the agency. The agency shall issue to him a certificate of compliance with this section upon the applicant's payment of the sum of three dollars ($3.00) to the agency. The permit shall be posted in the work area of the permit holder.

(c) A special occasion permit authorizes the permittee to purchase precious metals as a dealer participating in any trade shows, antique shows, and crafts shows conducted within the State. A special occasion permit shall be issued by any local law-enforcement agency; provided, however, that a permittee under subsection (a) shall apply for a special occasion permit with the local law-enforcement agency which issued such dealer's permit. An application for a permit shall be on a form as approved by the Department of Crime Control and Public Safety and shall be given under oath and notarized. A 30-day waiting period from the date of filing of the application is required prior to initial issuance of a permit.

Any dealer applying to a local law-enforcement agency for a special occasion permit shall furnish the local law-enforcement agency with the information required in an application for a dealer's permit as set forth in (a).

If the applicant for a special occasion permit is a partnership or association, all persons owning a ten percent (10%) or more interest in the partnership or association shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the partnership or association.

If the applicant for a special occasion permit is a corporation, each officer, director and stockholder owning ten percent (10%) or more of the corporation's stock, of any class, shall comply with the provisions of this subsection. Any such permits shall be issued in the name of the corporation.

No permit shall be issued to an applicant who, within five years prior to the date of application, has been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state. In the case of a partnership, association, or corporation, no permit shall be issued to any applicant with an officer, partner, or director who has, within five years prior to the date of application, been convicted of a felony involving a crime of moral turpitude, or larceny, or receiving stolen goods or of similar charges in any federal court or a court of this or any other state.

The Department of Justice may provide a criminal record check to the local law-enforcement agency for a person who has applied for a permit through the agency. The agency shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by

the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The agency shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The fee for an application for a special occasion permit shall be ten dollars ($10.00) to provide for the administrative cost of the local law-enforcement agency including purchase of required forms. The fee shall not be refundable even if the permit is denied or is later suspended or revoked. Such permits shall be in addition to and not in lieu of other business licenses and are not transferable.

A special occasion permit shall be valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form as approved by the Department of Crime Control and Public Safety and shall be accompanied by an application fee of ten dollars ($10.00). A renewal fee shall not be refundable.

Each special occasion permit shall be posted in a prominent place on the premises of any show at which the permittee purchases precious metals."

SECTION 3. G.S. 74C-8(c) is amended by adding a new subdivision to read:

"(5) The Department of Justice may provide a criminal record check to the Private Protective Services Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Private Protective Services Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 4. G.S. 74D-2(c) is amended by adding a new subdivision to read:

"(5) The Department of Justice may provide a criminal record check to the Alarm Systems Licensing Board for a person who has applied for a new or renewal license, registration, certification, or permit through the Alarm Systems Licensing Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 5. G.S. 84-24 reads as rewritten:

"**§ 84-24. Admission to practice.**

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the Council, who need not be members of the Council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years.

The Board of Law Examiners shall elect a member of the Board as chair thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable the Board to perform its duties promptly and properly. The chair and any employees shall serve for a period of time determined by the Board.

The examination shall be held in the manner and at the times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide assistance as

may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant. ~~The Board of Law Examiners, subject to the approval of the Council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.~~

The Department of Justice may provide a criminal record check to the Board of Law Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this section.

The Board of Law Examiners, subject to the approval of the Council, shall by majority vote, from time to time, make, alter, and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of the change.

All rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the Council.

Whenever the Council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to the person, noting thereon that the license is issued in compliance with an order of the Council, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

SECTION 6. G.S. 90-11 reads as rewritten:

"**§ 90-11. Qualifications of applicant for license.**

(a) Every applicant for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant in the State shall satisfy the North Carolina Medical Board that the applicant is of good moral character and meets the other qualifications for the issuance of a license before any such license is granted by the Board to the applicant.

(b) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 7. G.S. 90-30 reads as rewritten:

"**§ 90-30. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses.**

(a) The North Carolina State Board of Dental Examiners shall grant licenses to practice dentistry to such applicants who are graduates of a reputable dental institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of dentistry, subject, however, to the further provisions of this section and of the provisions of this Article.

The applicant shall be of good moral character, at least 18 years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character, has an academic education, the standard of which shall be determined by the said Board; that he is a graduate of and has a diploma from a reputable dental college or the dental department of a reputable university or college recognized, accredited and approved as such by the said Board.

The North Carolina State Board of Dental Examiners is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating,

deception or fraud during such examination, or whose examination discloses to the satisfaction of the Board, a deficiency in academic education. The Board may employ such dentists found qualified therefor by the Board, in examining applicants for licenses as it deems appropriate.

The North Carolina State Board of Dental Examiners may refuse to grant a license to any person guilty of a crime involving moral turpitude, or gross immorality, or to any person addicted to the use of alcoholic liquors or narcotic drugs to such an extent as, in the opinion of the Board, renders the applicant unfit to practice dentistry.

Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(b) The Department of Justice may provide a criminal record check to the North Carolina State Board of Dental Examiners for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 8. G.S. 90-85.15 is amended by adding a new subsection to read:

"(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 9. G.S. 90-210.25(a) reads as rewritten:

"**§ 90-210.25. Licensing.**

(a) Qualifications, Examinations, Resident Traineeship and Licensure. –

(1) To be licensed for the practice of funeral directing under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral director, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written funeral director examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.

2. Repealed by 1997-399, s. 5.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(2) To be licensed for the practice of embalming under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board.

d. Have completed 12 months of resident traineeship as an embalmer pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivision c. of this subdivision.

e. Have passed an oral or written embalmer examination on the following subjects:

1. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

2. Repealed by 1997-399, s. 6.

3. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the

care, transportation and disposition of dead human bodies.

(3) To be licensed for the practice of funeral service under this Article, a person must:

a. Be at least 18 years of age.

b. Be of good moral character.

c. Be a graduate of a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education. Have completed a minimum of 32 semester hours or 48 quarter hours of instruction, including the subjects set out in sub-part e.1. of this subdivision, as prescribed by a mortuary science college approved by the Board or a school of mortuary science accredited by the American Board of Funeral Service Education.

d. Have completed 12 months of resident traineeship as a funeral service licensee, pursuant to the procedures and conditions set out in G.S. 90-210.25(a)(4), either before or after satisfying the educational requirement under sub-subdivison c. of this subdivision.

e. Have passed an oral or written funeral service examination on the following subjects:

1. Psychology, sociology, funeral directing, business law, funeral law, funeral management, and accounting.
2. Embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.
3. Repealed by 1997-399, s. 7.
4. Laws of North Carolina and rules of the Board of Mortuary Science and other agencies dealing with the care, transportation and disposition of dead human bodies.

(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof, and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is

satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least once every month during traineeship upon forms provided by the Board listing the work which has been completed during the preceding month of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:

1. For funeral director trainees, the conduct of any funerals during the relevant time period,
2. For embalming trainees, the embalming of any bodies during the relevant time period,
3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
   1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
   2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
   3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

j., k. Repealed by Session Laws 1991, c. 528, s. 4.

l. The Board shall register no more than one resident trainee at a funeral establishment that served 100 or fewer families during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 families served at the funeral establishment during the 12 months immediately preceding the date of the application.

(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

a. All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

b. The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

c. All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

d. As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment. A licensee who completes more than five hours in a year may carry over a maximum of five hours as a credit to the following year's requirement. A licensee who is issued an initial license on or after July 1 does not have to satisfy the continuing education requirement for that year.

e. The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or more,

and for all licensees who are, at the time of renewal, members of the General Assembly.

f. The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

g. Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee.

h. The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license, or certification through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision."

SECTION 10. G.S. 90-224 is amended by adding a new subsection to read:

"(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a new or renewal license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 11. G.S. 93A-4 is amended by adding a new subsection to read:

"(b1) The Department of Justice may provide a criminal record check to the Commission for a person who has applied for a license through the Commission. The Commission shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commission shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 12. G.S. 95-47.2(d) reads as rewritten:

"(d) Upon the receipt of an application for a license the Commissioner:

(1) Shall publish a notice of the pending application in a newspaper of general circulation in the area of the proposed location of the employment agency and may publish the notice in a newspaper of general circulation in each area in which the applicant (or if a corporation, the president and majority shareholder) has resided during the five years preceding the time of the application. The notice shall include a statement informing individuals of their right to protest the issuance of a license by filing within 10 days written comments with the Commissioner. The protest shall be in writing and signed by the person filing the protest or by his authorized agent or attorney, and

shall state reasons why the license should not be granted. Upon the filing of a protest, the Commissioner, if he determines the protest to be of such a nature that a hearing should be conducted and that the protest is for a cause on which denial of a license may properly be based, shall appoint a time and place for a hearing on the application and shall give at least seven days' notice of that time and place to the license applicant and to the person filing the protest. The hearing shall be conducted in accordance with the provisions of the rules of the Administrative Procedure Act;

(2) Shall investigate the character, criminal record and business integrity of each applicant for agency license and shall investigate the criminal records of all persons listed as agency owners, officers, directors or managers. The applicant and all agency owners, officers, directors and managers shall assist the department in obtaining necessary information by authorizing the release of all relevant information;

(2a) The Department of Justice may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of all applicants, any additional information required by the Department of Justice, and a form signed by the applicants consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicants' fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

(3) Upon completion of the investigation, or 30 days after the application was received, whichever is later, but in no case more than 45 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:

a. If the applicant for agency license, or the president or majority shareholder of a corporate applicant, omits or falsifies any material information asked for in the application and required by the Commissioner;

b. If any owner, officer, director or manager of the employment agency:
   1. Has been convicted in any state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense involving fraud or moral turpitude;
   2. Was an owner, officer, director or manager of an employment agency or other business whose license was revoked or that was otherwise caused to cease operation by action of any State or federal agency or court because of violations of law or regulation relating to deceptive or unfair practices in the conduct of business;
   3. As an owner or manager of an employment agency or other business or as an employment counselor was found by any State or federal agency or court to have violated any law or regulation relating to deceptive or unfair practices in the conduct of business; or
   4. In any other demonstrable way engaged in deceptive or unfair practices in the conduct of business;

c. If the employment agency will be operated on the same premises as a loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15)."

SECTION 13. G.S. 106-65.26 is amended by adding a new subsection to read:

"(e) The Department of Justice may provide a criminal record check to the Committee for a person who has applied for a new or renewal license through the Committee. The Committee shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Committee shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection."

SECTION 14. G.S. 160A-304(a) reads as rewritten:

"(a) A city may by ordinance license and regulate all vehicles operated for hire in the city. The ordinance may require that the drivers and operators of taxicabs engaged in the business of transporting passengers for hire over the public streets shall obtain a

license or permit from the city; provided, however, that the license or permit fee for taxicab drivers shall not exceed fifteen dollars ($15.00). The ordinances may also specify the types of taxicab services which are legal in the municipality; provided, that in all cases shared-ride services as well as exclusive-ride services shall be legal. Shared-ride service is defined as a taxi service in which two or more persons with either different origins or with different destinations, or both, occupy a taxicab at one time. Exclusive-ride service is defined as a taxi service in which the first passenger or party requests exclusive use of the taxicab. In the event the applicant is to be subjected to a national criminal history background check, the ordinance shall specifically authorize the use of FBI records. The ordinance shall require any applicant who is subjected to a national criminal history background check to be fingerprinted.

The Department of Justice may provide a criminal record check to the city for a person who has applied for a license or permit through the city. The city shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The city shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

The following factors shall be deemed sufficient grounds for refusing to issue a permit or for revoking a permit already issued:

(1) Conviction of a felony against this State, or conviction of any offense against another state which would have been a felony if committed in this State;

(2) Violation of any federal or State law relating to the use, possession, or sale of alcoholic beverages or narcotic or barbiturate drugs;

(3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;

(4) Violation of any federal or State law relating to prostitution;

(5) Noncitizenship in the United States;

(6) Habitual violation of traffic laws or ordinances.

The ordinance may also require operators and drivers of taxicabs to display prominently in each taxicab, so as to be visible to the passengers, the city taxi permit, the schedule of fares, a photograph of the driver, and any other identifying matter that the council may deem proper and advisable. The ordinance may also establish rates that may be charged by taxicab operators, may limit the number of taxis that may operate in the city, and

may grant franchises to taxicab operators on any terms that the council may deem advisable."

SECTION 15. If the Private Security Officer Employment Standards Act of 2002 is ratified by the United States Congress, the State of North Carolina declines to participate in the background check system authorized by that act as a result of the enactment of this act.

PART II. CONFORM SEX OFFENDER REGISTRATION

SECTION 16. G.S. 14-208.6 reads as rewritten:

"**§ 14-208.6. Definitions.**

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(1b) "County registry" means the information compiled by the sheriff of a county in compliance with this Article.

(1c) "Division" means the Division of Criminal Statistics of the Department of Justice.

(1d) "Employed" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(1e) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

~~(1d)~~(1f) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

~~(1e)~~(1g) "Nonresident student" means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a part-time or full-time basis.

~~(1f)~~(1h) "Nonresident worker" means a person who is not a resident of North Carolina but who has employment or carries on a vocation in the State, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

~~(1g)~~(1i) "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41

(abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) "Penal institution" means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) "Recidivist" means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) "Release" means discharged or paroled.

(4) "Reportable conviction" means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

c. A final conviction in a federal jurisdiction (including a court martial) of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor),

G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in ~~in~~ the prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) "Sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) "Sheriff" means the sheriff of a county in this State.

(8) "Statewide registry" means the central registry compiled by the Division in accordance with G.S. 14-208.14.

(9) "Student" means a person who is enrolled on a full-time or part-time basis, in any postsecondary public or private educational institution, including any trade or professional institution, or other institution of higher education."

SECTION 17. G.S. 14-208.7(b) reads as rewritten:

"(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph; ~~and~~

(4) The person's ~~fingerprints.~~fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration."

SECTION 18. G.S. 14-208.8(a) reads as rewritten:

"(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;

(2) Obtain the registration information required under G.S. ~~14-208.7(b)(1) and (2),~~ 14-208.7(b)(1), (2), (5), and (6), as well as the address where the person expects to reside upon the person's release; and

(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection."

SECTION 19. G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of ~~address.~~address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall provide written notice of the new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating

employment at an institution of higher education, then the person shall provide written notice of the new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 20. G.S. 14-208.11 reads as rewritten:

"**§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.**

(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3)."

SECTION 21. G.S. 14-208.14 reads as rewritten:

"**§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.**

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of address, changes of academic or educational employment status, and prerelease notifications required under this Article or under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To provide all need-to-know law enforcement agencies (local, State, campus, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, a change of academic or educational employment status, or notice of a violation of this Article.

(2a) To notify the appropriate law enforcement unit at an institution of higher education as soon as possible upon receipt by the Division of relevant information based on registration information or notice of a change of academic or educational employment status. If an institution of higher education does not have a law enforcement unit, then the Division shall provide the information to the local law enforcement agency that has jurisdiction for the campus.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution."

PART III. EFFECTIVE DATE

SECTION 22. Part I of this act is effective when it becomes law. Part II of this act becomes effective September 30, 2002, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1638:
Crim. Hist. Check/Conform Sex Off. Reg.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Haire
Date:	September 19, 2002	**Summary by:**	Susan L. Sitze
Version:	H1638-PCS4309-SA-50		Staff Attorney

SUMMARY: ***The proposed committee substitute for House Bill 1638 amends various statutes regarding criminal history checks to ensure that national criminal history checks will be allowed pursuant to those statutes after December 31, 2002, and allows the SBI to charge a fee to the applicant for conducting the checks. The bill also amends the sex offender registration statutes to conform them to the Campus Sex Crimes Prevention Act.***

PART I.

BILL ANALYSIS: Part I. of the proposed committee substitute for House Bill 1638 amends various statutes to ensure that after December 31, 2002, certain agencies and boards will be able to conduct national criminal history checks.

The agencies and boards covered by these statutes include:

- The Alcohol Law Enforcement Division when investigating ABC permit applicants
- Local Law Enforcement agencies when issuing precious metal dealer permits
- The Private Protective Services Board
- The Alarm Systems Licensing Board
- The Board of Law Examiners
- The Medical Board
- The State Board of Dental Examiners
- The Board of Pharmacy
- The Board of Mortuary Science
- The Real Estate Commission
- The Commissioner of Labor, when investigating Private Personnel Service license applicants
- The Structural Pest Control Committee
- Cities, when investigating Taxi license applicants

Any national criminal history checks conducted pursuant to these sections will be conducted through the State Bureau of Investigation (SBI) who is authorized to charge a fee to the applicant for conducting the check. The fingerprints and information will be submitted to the SBI by the licensing board or agency.

BACKGROUND: In April 2001, the FBI notified the SBI, after a review of the North Carolina statutes that authorize criminal history checks, that many of the State statutes did not meet the federal guidelines for access to FBI records. The original notice informed the SBI that as of May 1, 2002, background requests submitted to the FBI pursuant to those statutes would not be honored unless the statutes were amended to conform to the guidelines. The SBI obtained an extension of that date to December 31, 2002. This bill will conform those statutes to meet the guidelines.

The criteria established by the FBI, pursuant to P.L. 92-544, are as follows:

1. The statute must exist as a result of a legislative enactment;
2. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
3. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
4. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
5. It must not be against public policy; and
6. It may not authorize receipt of the CHRI by a private entity.

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a "national" criminal history check.

The statutes addressed by the proposed committee substitute to HB1638 fail to meet criteria #2 and/or #3.

PART II.

BILL ANALYSIS: Part II. of the proposed committee substitute for H1638 will bring North Carolina into compliance with the requirements of the Campus Sex Crimes Prevention Act. This part requires a registered sex offender to notify the sheriff at registration if the person required to register is a student or employee of an institution of higher education, or expects to become a student or employee of an institution of higher education within one year of registering. If so, the offender must provide the name and address of the education institution at which the offender is a student or employed, or expects to be a student or employed. At any time, if a person required to register changes their academic status or employment status, either by becoming a student or employee of an institution of higher education, or by terminating enrollment or employment at an institution of higher education, they shall notify the sheriff not later than the tenth day after the change in status. Failure to comply with these provisions is a violation of G.S. 14-208.11, a Class F felony.

This part also requires the Division of Criminal Statistics of the Department of Justice to notify the appropriate law enforcement unit at an institution of higher education as soon as possible upon receipt of registration information or notice of a change of academic or educational employment status. If an institution of higher education does not have a law enforcement unit, then the Division shall provide the information to the local law enforcement agency that has jurisdiction for the campus.

BACKGROUND: In October 2000, the President signed the Victims of Trafficking and Violence Protection Act (P.L. 106-386) into law. Part of that Act was designated as the Campus Sex Crimes

Prevention Act which added an additional requirement to State sex offender registry programs required under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program.

The Campus Sex Crimes Prevention Act requires any person required to register under a State sex offender registration program to notify the State concerning each institution of higher education in the State at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution. The failure of a registrant to notify the State concerning enrollment or employment at an institution of higher education or the termination of such enrollment or employment constitutes a failure to register or keep such registration current and must be subject to criminal penalties. State procedures must also ensure that information concerning a registrant enrolled or working at an institution of higher education is promptly made available to a law enforcement agency having jurisdiction where the institution is located, and entered into the appropriate State records or data system.

Failure to comply with the requirements of the Campus Sex Crimes Prevention Act by October 27, 2002 will result in a 10% reduction in Byrne Formula Grant money. North Carolina currently receives about 13 million a year in this type of grant money.

PART III.

Part III of the proposed committee substitute for H1638 provides that Part I is effective when it becomes law, and that Part II is effective September 30, 2002 and applies to offenses committed on or after that date. The remainder of the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1638 (2nd Edition)

SHORT TITLE: Private Protect. Services Crim. Hist. Check

SPONSOR(S): Representative Haire

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES (DOJ)	*Exact amount cannot be determined.*				
EXPENDITURES (DOJ)	*The Department of Justice will be reimbursed for costs.*				
POSITIONS:	0	0	0	0	0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice: State Bureau of Investigation; Private Protective Services Board; Alarm Systems Licensing Board; Dept. of Crime Control & Public Safety: Alcohol Law Enforcement Division; ABC Commission; Board of Law Examiners; NC Medical Board; Board of Dental Examiners; Board of Pharmacy; Board of Mortuary Science; Real Estate Commission; Commissioner of Labor; Department of Agriculture and Consumer Services: Structural Pest Control Division

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

BILL SUMMARY: Allows the Department of Justice to provide criminal background histories to several state boards and local agencies on applicants for a variety of licenses and permits:

- Alcohol Law Enforcement Division, Dept. of Crime Control & Public Safety (ABC permits)
- Local law enforcement (precious metal dealers)
- Private Protective Services Board
- Alarm Systems Licensing Board
- Board of Law Examiners
- Medical Board
- Board of Dental Examiners (dentists, dental hygienists)
- Board of Pharmacy
- Board of Mortuary Science (funeral directors)
- Real Estate Commission
- Commissioner of Labor (private personnel services)
- Structural Pest Control Committee, Department of Agriculture and Consumer Services
- Local ordinances (taxis)

Provides that, if a criminal history check is requested, the Department of Justice shall conduct a state check and forward the applicant's fingerprints to the FBI for a national check. The DOJ may charge each applicant a fee for conducting the background checks. Finally, the legislation requires that applicants for ABC permits and precious metal dealer licenses submit fingerprints with their applications.

ASSUMPTIONS AND METHODOLOGY:
No estimate is available for the total number of new background checks that would be requested as a result of this legislation. If all of the above groups request background checks on all new applicants, there is the potential for more than 13,000 new background checks. However, Fiscal Research is unable to determine whether all groups would request background checks and whether checks would be requested on all applicants.

The March 2002 Office of State Budget and Management Report on DCI Fee Study indicated the Department of Justice's average cost to process a national background check is $12.18. The current fee charged by the Department of Justice to conduct a national background check is $38, of which $22 is remitted to the Federal Bureau of Investigation. The report also indicated that the Department of Justice, as currently staffed, is able to accommodate an increase in background checks within its existing staffing level. Conversations with DOJ staff indicate that the DOJ can accommodate the additional workload generated by this bill with existing staff. The DOJ will also be able to charge fees to cover its expenses.

ALE – ABC permits. ALE currently conducts name checks of ABC permit applicants from its criminal information terminals. Under the proposed legislation, the ABC Commission may choose to request fingerprint background checks for some types of permit applications. In these cases, the ABC Commission would obtain the applicant's fingerprints and submit the fingerprint card along with the application to ALE. ALE would forward the fingerprint card to the DOJ, which would conduct a state background check and forward the fingerprints to the FBI for a national check. The ABC Commission has not yet determined the types or number of permit applications that it would like to submit for fingerprint checks.

Local law enforcement – precious metal dealers. Precious metal dealers are licensed through local law enforcement agencies, who are currently authorized to request background checks from DOJ for these licenses. There is no estimate available on the number of background checks currently conducted on these applicants or the projected number under this legislation.

Private Protective Service and Alarm Systems Licensing Boards. The Boards estimate that 575 applicants annually will submit fingerprints for a national criminal history background check.

NC Board of Law Examiners. The DOJ currently provides background checks on prospective lawyers. In 1999, 1,024 fingerprint checks were conducted for the Board. The state portion of the fee for these background checks is waived; this legislation authorizes the DOJ to charge applicants a fee for conducting the background checks (both state and national).

NC Medical Board. The Medical Board licenses doctors, physician's assistants, nurse practitioners, and clinical pharmacists. The Medical Board is authorized to request background checks through the DOJ. However, according to staff at the Medical Board, background checks

are currently conducted through a private vendor. Due to the costs involved, these checks are not performed on the majority of applicants. The Board's administrative rules do not permit it to pass the costs of the background checks on to the applicants. This legislation would allow the DOJ to charge each applicant a fee for conducting the background checks. The Board distributed approximately 2,000 new licenses last year (most completed applications are approved for licensure). Under this proposal, the DOJ could receive approximately 2,000 new requests for background checks each year from the NC Medical Board.

NC Board of Dental Examiners – dentists, dental hygienists. The number of applicants for these licenses varies by month and year. In FY 2001, the Board received a total of 584 dentist and dental hygienist applications. The Board recently began conducting background checks on all applicants through a private vendor. Under the proposed legislation, the DOJ could receive requests for checks on all dental and hygienist applicants.

Board of Pharmacy. The Board does not currently request or conduct criminal history checks on pharmacist applicants, but it has considered conducting background checks through a private vendor. Under the proposed legislation, the Board may request checks through the DOJ. In FY 2000-01, 422 new pharmacists were licensed; in FY 1999-2000 there were 524 new pharmacists licensed. The total number of applicants is unavailable. Background checks could be requested for each applicant.

Board of Mortuary Sciences. In 2001, approximately 76 applicants were newly licensed as funeral directors, embalmers, and funeral service practitioners. The DOJ does not currently perform background checks for the Board, but would be able to do so under this legislation.

Real Estate Commission. Approximately 8,000 individuals applied for real estate licenses last year. The Commission currently conducts background checks only on applicants who pass the licensing exam and mention a criminal history, pending charges, or licensing violation in the character section of their application. These checks are conducted by a private vendor and paid for by the Commission. However, the Commission is currently working on a new policy, which it plans to put into effect January 1, 2003. Under the new policy, all applicants would be required to submit criminal records with their applications. These records must cover the past seven years and include a statewide criminal history check and a countywide check for any county outside of North Carolina in which the applicant resided during those years. Applicants would obtain and pay for the criminal record checks through private vendors; the Commission estimates that applicants will pay from $8 (state only) to $15 (state and county outside NC) for the background checks.

Under the proposed legislation, the Real Estate Commission would be able to request state and national background checks from the DOJ for each applicant, and DOJ would charge the applicants for the cost of the checks. At this time, Fiscal Research is unable to determine whether the Commission would request checks from the DOJ.

Commissioner of Labor – private personnel services. The Wage and Hour Bureau processes an average of three new license applications each year. If the Bureau chooses to request background checks, the DOJ can absorb the workload.

Dept. of Agriculture - Structural Pest Control Committee. In FY 2000-01, the Committee approved applications for 240 Certified Applicators, 1,566 Registered Technicians, and 38 Structural Pest Control licenses. The Department of Agriculture is authorized to request background checks from the DOJ, but has not made significant use of this service in the past. In FY 2001, the Department requested only one name check, and no fingerprint checks. The impact of this legislation on Structural Pest Control application policies cannot be determined.

Taxi Operators. In 2000, there were 2,170 licensed taxi cab drivers and chauffeurs in North Carolina. In 1999, there were 2,300. It is not known how many new drivers are licensed each year. Current law permits localities to request taxi driver background checks from the DOJ. Some cities, such as Charlotte, already require background checks for taxi drivers, so the DOJ workload from those cities would not increase as a result of this legislation. Other cities, however, may begin or increase their use of DOJ background check services.

SOURCES OF DATA: Estimates of the annual number of applicants who will submit fingerprints for background checks and the annual number of new licenses were provided by the boards responsible for licensing. The source of the cost data for the Department of Justice is the *Final Report on the Study of the Cost of Providing Criminal Record Checks* issued by the Office of State Budget and Management in March 2002. Data on licensed cab drivers was obtained from the U.S. Department of Labor, Bureau of Labor Statistics Web site (www.bls.gov).

TECHNICAL CONSIDERATIONS: Section 5 amends G.S. 84-24, allowing the DOJ to charge applicants to the Board of Law Examiners for the cost of the criminal background checks. Currently, state background check fees are waived for these applicants.

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Chloe Gossage and Denise Thomas

APPROVED BY: James D. Johnson

DATE: September 17, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
S.B. 1268 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF MONROE TO USE WHEEL LOCKS ON ILLEGALLY PARKED VEHICLES.

☐ 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 original 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1268
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1268-PCS4769-LBx-168

Short Title: Monroe Wh. Lock/Norwood Util./Mt.Gilead Annex (Local)

Sponsors:

Referred to:

June 6, 2002

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF MONROE TO USE WHEEL LOCKS ON ILLEGALLY PARKED VEHICLES, TO ALLOW THE TOWN OF NORWOOD TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE IT, AND TO ANNEX NONCONTIGUOUS TERRITORY TO THE TOWN OF MOUNT GILEAD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of Chapter 291 of the 1993 Session Laws, as amended by Chapter 381 of the 1995 Session Laws and Chapter 218 of the 1997 Session Laws, reads as rewritten:

"**Sec. 2.** This act applies to the Cities of Durham, Greensboro, Lenoir, Monroe, Raleigh, and Winston-Salem only. This act shall also apply to the City of Wilmington, but only as to the area in the central business district as defined in that City's zoning ordinance as of June 1, 1997."

SECTION 2. Section 2 of Chapter 1070 of the 1989 Session Laws, as amended by S.L. 1998-84 and S.L. 1999-127, reads as rewritten:

"**Sec. 2.** This act applies to the Towns of Chadbourn, Norwood, Richfield, Mount Gilead, and Stanfield, the City of Locust, and Montgomery County only."

SECTION 3. The corporate limits of the Town of Mount Gilead are extended to include the following described territory, which shall be considered to be satellite corporate limits until the intervening territory has been annexed:

Lying and being in Mount Gilead Township, Montgomery County, North Carolina 2,941.03 feet north of the intersection of NC Hwy. 109 and SR. 1127, and lying on the west side of and adjoining NC Hwy. 109 and being more particularly described as follows:

BEGINNING at an existing iron pipe, said iron pipe being the most southern corner of that Tract 1 as shown by deed recorded in Deed Book 315, Page 429 and runs thence as the southwest line of Tract 1 above mentioned N 64°34'58" W 453.62 feet to a new iron

rod, said iron rod being located S 64°34'58" E 542.30 feet from an existing iron axle, the southwest corner of Tract 1 above mentioned; thence as a new line N 13°37'47" E 935.81 feet to a new iron rod; thence N 23°51'58" E 70.63 feet to a new iron rod; thence as a curve running clockwise to the north with a radius of 200.00 feet, an arc length of 149.84 feet, and a chord bearing and distance of N 07°49'58" W 146.36 feet to a new iron rod; thence N 13°37'47" E 340.32 feet to a new iron rod; thence N 12°19'39" E 270.13 feet to a new iron rod; thence S 77°41'14" E 489.55 feet to an existing iron rod; thence S 73°05'24" E 448.60 feet to an existing iron rod in the western right-of-way of NC Hwy. 109; thence as said right-of-way S 09°33'19" W 1313.39 feet to an existing highway right-of-way monument in the original southeastern line of the above mentioned Tract 1; thence as said southeastern line S 62°13'27" W 250.70 feet to an existing iron pipe; thence S 62°38'31" W 27.99 feet to an existing iron rod; thence continuing as said southeastern line S 62°13'27" W 494.97 feet to the BEGINNING, containing 36.93 acres, said tract being a portion of Tract 1 and Tract 2 of that deed recorded in Deed Book 315, Page 429, Montgomery County Registry.

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

SENATE BILL 1268: Monroe Wheel Lock/Norwood Utilities/Mt. Gilead Annex

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Sen. Plyler
Date:	September 18, 2002	**Analysis by:**	Martha Walston
Version:	PCS4769-LBx-168		Committee Counsel

SUMMARY: Senate Bill 1268 is a local bill that does the following:

- *It allows the City of Monroe to use wheel locks on illegally parked vehicles.*
- *It allows the Town of Norwood to collect utility bills as if they were taxes due.*
- *It annexes noncontiguous territory to the Town of Mount Gilead.*

The original bill only contained the City of Monroe part and was given a favorable report in Senate State & Local Government. The bill is effective when it becomes law.

BILL ANALYSIS: The proposed committee substitute is a local bill that does the following:

1. It allows the City of Monroe to adopt an ordinance for the use of wheel locks on illegally parked vehicles for which there are three or more outstanding, unpaid, and overdue parking tickets for a period of 90 days. The ordinance must provide for notice or warning to be affixed to the vehicle, immobilization, towing, impoundment, appeal, hearing, and an immobilization fee not to exceed $50. Municipalities are not responsible for damages to vehicles caused by people trying to free their car. The following municipalities already have this authority: Winston-Salem, Greensboro, Durham, Raleigh, Lenoir, and the central business district of Wilmington. Various other local acts have given similar authority to Charlotte (S.L. 2000-59 and S.L. 2001-88), Henderson and Asheville (S.L. 95-75), Greenville (S.L. 93-609), and Chapel Hill (S.L. 93-358).
2. It allows the Town of Norwood to collect utility bills (water and sewage) as if they were taxes due. This means the town may collect unpaid water and sewer bills in this manner when the person responsible for the bill fails to pay for more than 60 days after the bill becomes delinquent. The Town may use the same remedies that it can use to collect property taxes in G.S. 105-366 and G.S. 105-367. G.S. 105-366 gives the tax collector authority to levy on the delinquent person's personal property. G.S. 105-367 provides that the tax collector shall conduct the sale of the personal property, unless the governing body of the taxing unit authorizes the tax collector to direct the sheriff to execute on the property and conduct the sale. The following municipalities and county already have this authority: Richfield, Chadbourn, Mount Gilead, Stanfield, Locust, and Montgomery County.
3. It extends the corporate limits of the Town of Mount Gilead in Montgomery County to include certain noncontiguous property.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1720 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1720
PROPOSED COMMITTEE SUBSTITUTE H1720-PCS5478-SVx-86

Short Title: Wilmington Occupancy Tax. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

SECTION 1.(b) Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The following definitions apply in this section:

(1) Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

SECTION 1.(d) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account. Funds in the account, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been met but within four years after the first levy of a tax under this section, the City of Wilmington fails to demonstrate to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

SECTION 1.(e) Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request.

SECTION 2. City administrative provisions. – G.S. 160A-215, as amended by S.L. 2002-95, reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the

tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

HOUSE BILL 1720:
Wilmington Occupancy Tax

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Wright
Date:	September 18, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel
	H1720-CSSVx-86 [v.3]		

SUMMARY: ***The proposed committee substitute for House Bill 1720, which received a favorable report by the Occupancy Tax Subcommittee, does the following:***

- ***It authorizes the City of Wilmington to levy a 3% occupancy tax if New Hanover County has created a Tourism Development Authority. The tax could become effective no earlier than February 1, 2003.***
- ***It provides that the occupancy tax proceeds are to be used for the construction, financing, operation, promotion, and maintenance of a convention center, if certain conditions are met. If those conditions are not met, the proceeds would be remitted to the Tourism Development Authority and used to promote tourism within the city.***

CURRENT LAW: Wilmington does not have the authority to levy an occupancy tax. However, New Hanover County currently levies a 3% occupancy tax and forty percent (40%) of the net proceeds are distributed among the municipalities in the county in accordance with the method by which the 1% local sales and use taxes levied in the county are distributed. The proceeds distributed to the municipalities are used to promote travel and tourism.

BILL ANALYSIS:

Levy of Tax

The proposed committee substitute for House Bill 1720 authorizes the City of Wilmington to levy a 3% room occupancy tax if New Hanover County has created a Tourism Development Authority. The tax could become effective no earlier than February 1, 2003.

Administration of Tax

New Hanover County would collect and administer the tax on behalf of the city. Once collected, the county is required to remit the funds to a convention center account.

Use of Funds

The funds in the convention center account may be used only as follows:

1) If, within 3 years after the first levy of the 3% tax, the City of Wilmington has demonstrated to the satisfaction of the TDA that all financing and development arrangements for a convention center have been completed, the county must remit the funds to the City of Wilmington to be used for the construction, financing, operation, promotion, and maintenance of a convention center. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington.
2) If the conditions in 1) have not been met within 3 years, the county must remit the funds to the TDA to be used to promote travel and tourism.
3) If the conditions in 1) have been met but within four years after the first levy of the 3% tax, construction has not begun on a convention center, then the city must return any funds it received

that have not been committed to the Tourism Development Authority. The Authority must use these proceeds to promote travel and tourism in the city.

Reporting Requirements

Each entity responsible for administering and spending the proceeds of the occupancy tax must annually publish a detailed, audited report on its receipts and expenditures during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1720 (2nd Edition)

SHORT TITLE: **Wilmington Occupancy Tax**

SPONSOR(S):

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund	* No General Fund Impact *				
Wilmington/New Hanover Co.	**555,208**	**1,345,825**	**1,359,283**	**1,372,876**	**1,386,605**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wilmington and New Hanover County.

EFFECTIVE DATE: When it becomes law. However, the tax cannot become effective until February 1, 2003.

BILL SUMMARY: If New Hanover County creates a Tourism Development Authority, then the City of Wilmington is authorized to levy a 3% room occupancy tax. The bill applies all the standard provisions regarding the collection of the funds. In addition, the bill instructs New Hanover County to create a convention center account, with the county remitting the net proceeds of the tax to that account. (The bill assumes the county will collect the tax for the City of Wilmington). If at the end of three (3) years the City of Wilmington has not demonstrated to the Tourism Development Authority that all financing and development arrangements for a convention center have been completed, the revenues generated up to that time, the balance in the convention center account are forwarded to the Tourism Development Authority. The Authority is then instructed to use the funds to promote travel and tourism. All future occupancy tax revenues are to flow to the Authority. However, if the City is able to demonstrate within three years, to that satisfaction of the Authority, that all necessary arrangements are complete, the balance in the account will flow to the City of Wilmington to construct and operate a convention center. All future proceeds would also flow to the City for the same purpose, with one exception. If the city of Wilmington does not begin construction on a Downtown Wilmington convention center within one year of receiving the funds in the account, the unspent and uncommitted balance is to revert to the Authority, with all future funds also remitted to the TDA.

ASSUMPTIONS AND METHODOLOGY: It is assumed that the area will not see a decrease in its tourism industry or hotel occupancy rates due to the proposed legislation. The average room rate varies widely in Wilmington based on in and off-season tourism patterns. The proposed occupancy tax is levied against the gross receipt sales, thus revenues throughout the year could rise and fall with the seasonal room rates.

New Hanover County occupancy tax data were gathered from both the UNC-Wilmington Center for Business and Economic Services and the New Hanover County Finance Division. In fiscal year 2001-2002 New Hanover County collected $2.6 million from its 3% current occupancy tax. Wilmington is the largest municipality in the county, comprising approximately 50% of the population and industry in the area. The Cape Fear Coast Convention and Visitor's Bureau reports 7,365 rental units in New Hanover County, which includes 3,567 units in Wilmington. Thus, it is assumed that a Wilmington room tax would generate half of the revenue generated under the county tax at the same tax rate.

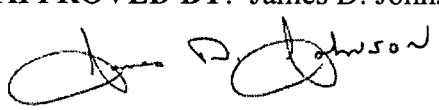
Fiscal Research typically increases occupancy tax estimates at an annual rate of 4%. However, a modest 1% annual growth rate is projected in Wilmington due to the fluctuating tourism industry in the area. Recent county annual revenues have increased (2000) and decreased (1999 and 2001) based on vacation trends, severe weather, and the economic situation in the country. Actual growth will vary depending on the economic recovery and local development and planning activities.

NOTE: The estimate for fiscal year 2002-03 assumes only five months of collections, as the bill specifics that the tax cannot be levied until February 1, 2003.

SOURCES OF DATA: Cape Fear Coast Convention and Visitor's Bureau; UNC-Wilmington Center for Business and Economic Services; New Hanover County Finance Division; City of Wilmington.

FISCAL RESEARCH DIVISION: (919) 733-4910
PREPARED BY: Linda Struyk Millsaps, and Stephanie Schmitt

APPROVED BY: James D. Johnson



DATE: September 19, 2002

MINUTES

HOUSE COMMITTEE ON FINANCE
September 26, 2002

The House Committee on Finance met at 8:30 a.m. on Thursday, September 26, 2002 in Room 544 of the Legislative Office Building. The following members were present: Chairmen Allen, Buchanan, and Wainwright; Vice-Chairs Hill and Jarrell; and Representatives Alexander, Cox, Decker, Eddins, Edwards, Gibson, Gray, Holliman, Hurley, Johnson, McComas, McCombs, McMahan, Morris, Rayfield, Starnes, Weiss, Willingham, Wilson, Womble, and Cunningham. Representative Wainwright called the meeting to order and introduced the Sergeants-at-Arms, Dusty Rhodes, Bob Fowler, Walter Spell and Bill Freeman, along with the Committee Assistants and Staff. The Agenda and Visitor Registration Sheet are attached and made a part of these minutes. **(Refer to Attachments 1 and 2).**

HOUSE BILL 623, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE LAWS GOVERNING THE PUBLIC CONSTRUCTION LAWS TO PROVIDE FOR EFFICIENCIES AND FLEXIBILITY IN BUILDING DESIGN, CONSTRUCTION, AND PLAN REVIEW, TO PROMOTE ENERGY EFFICIENCY IN STATE-OWNED BUILDINGS, AND TO AMEND THE LAW GOVERNING LANDSCAPE ARCHITECTURE, was before the committee for concurrence. Representative McMahan stated that the bill would extend to State agencies the authority to enter into guaranteed energy savings contracts. Under current law, local governments have the authority to enter into these contracts. The proposed conference committee substitute for House Bill 623 was in House Finance for a recommendation as to whether or not the House should concur with the changes made by the conferees. He asked that the committee concur. Representative Hill moved for concurrence of the bill. The committee concurred. **The Committee Report, Bill, Bill Analysis, and Fiscal Note are included in Attachment 3.**

Senator Kerr was recognized to explain **HOUSE BILL 1670, A BILL TO BE ENTITLED AN ACT TO CLARIFY THE EXPENSE ATTRIBUTION LAW AS IT APPLIES TO DEDUCTIBLE DIVIDENDS AND TO PROVIDE LIMITS ON THE POTENTIAL TAX LIABILITY**. Senator Kerr stated that the Senate Committee Substitute for House Bill 1670 provided certainty and clarity to the expense attribution law as it applied to deductible dividends and provided limits on the potential tax liability. The bill assured the State of the revenues relied upon in its budget availability estimates for 2001 and 2002. Under the bill, the State could expect to receive approximately $57 million a year for 2001, 2002, and 2003 from the taxation of subsidiary dividends. Of this amount, the State expected to receive approximately $80 million in availability for the 2002-03 budget. The bill would become effective for taxable years beginning on or after January 1, 2001. The bill was back in the House for concurrence with the Senate changes. The original House Bill 1670 contained the House fee provisions. None of the original

provisions of House Bill 1670 were in the Senate Committee Substitute. Most of the fee provisions in the original House bill were included in the budget conference committee substitute. Sabra Faires of the Department of Revenue stated that the Department is neutral about the policies involved in the bill. The Department felt this was a resolution to what was a problem. The Revenue Laws Study Committee would address concerns regarding the banks in the study bill. Representative Hill moved for a favorable report to the Senate Committee Substitute. The Committee recommended that the House concur. **The Committee Report, Bill, Bill Analysis, and Fiscal Note are included in Attachment 4.**

Representative Carey Allred was recognized to present **HOUSE BILL 1679, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE INCORPORATION OF THE VILLAGE OF OSSIPEE AND THE SIMULTANEOUS DISSOLUTION OF THE OSSIPEE SANITARY DISTRICT**. Representative Buchanan moved that the Proposed Committee Substitute (PCS) be before the committee for discussion. Representative Jarrell stated that the bill met all requirements of the law. Representative Buchanan moved for a favorable report. The committee gave a favorable report to the committee substitute bill, and an unfavorable report to the original bill. **The Committee Report and PCS are included in Attachment 5.**

Senator Rand was recognized to present **SENATE BILL 832, A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL AGENCIES.** Representative Buchanan moved that the Proposed Committee Substitute (PCS) be before the committee for discussion. Senate Bill 832 would create the N.C. Small Business Contractor Authority in the Department of Commerce to provide loan guarantees, loans, and surety bonds for financially responsible small North Carolina businesses that were unable to obtain adequate financing and bonding assistance in connection with contracts. Senator Rand responded to questions from the committee. The bill would allow small businesses to apply for bonding. The bill had the support of minority small businesses, and would help minority contractors and female businesses. Representative Cunningham moved for a favorable report to the House Committee Substitute Bill, and an unfavorable report to the Committee Substitute Bill. The PCS was given a favorable report. **The Committee Report, PCS, Bill Analysis, and Fiscal Note are included in Attachment 6.**

Senate Bill 1455 would be heard at another meeting. The meeting adjourned at 9:20 a.m.

Respectfully submitted,

Blinda Edwards
Committee Assistant

Representative William Wainwright
Presiding Chair

Attachment 1

AGENDA

House Finance Committee

September 26, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

BILLS TO BE HEARD

HB 623	STATE ENERGY CONSERVATION PROGRAM- REP. MCMAHAN (BACK FOR CONCURRENCE)
HB 1670	SUBSIDIARY DIVIDEND CHANGES- REP. LUEBKE
SB 832	SMALL BUSINESS CONTRACTOR INITIATIVE/FUNDS- SENATOR. RAND
SB 1455	STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS- SENATOR RAND
HB 1679	INCORPORATE OSSIPEE- REP. ALLRED. COLE, & TEAGUE

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — SEPTEMBER 26, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Currey	Sec of State
DAVID MASSEY	SEC OF STATE
Robert Wilson	Sec. of State
Charles Thenj	Progress Energy
JAMES RAYFORD	TRIANGLE CONTRACTING CO. LLC 6512 CREEDMOOR RD, RALEIGH, NC
Diane Rayford	6512 Creedmoor Rd Raleigh NC
Lori C Harris	L H Harris & Assoc Inc
John Goodman	MERCER ASSOC.

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — SEPTEMBER 26, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Letitia Withrow	NC State Watch
LLoyd Dunn, JR	NC INSTITUTE OF MINORITY ECONOMIC DEVELOPMENT. DURHAM, NC
Donna Powell	NCDOR
Greg Redford	NC DOR
Sabra Faires	NC DOR
Lennie Collins	NC DOR
Larry Bawley	LBA
[illegible]	Poyner Spruill
[illegible]	Progress Energy
John Mathews	GOVOFFICE
Forrest Campbell	Secretary of State - Securities

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — SEPTEMBER 26, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Theresa Kostyzan	CAA
[illegible]	MTE
Leslie Bevacqua	NCCBI
David Barnes	Poyner + Spruill
Alice Garland	EC
John Hibbes	Progress Energy
[illegible]	Poyner + Spruill
[illegible]	Johnson Controls, Inc.
Betty Turner	Bank of America
Paul Stock	NCBA
Dirk Carlton	Carlton Alexander

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Senate Committee Substitute for
H.B. 623 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES IN THE LAWS GOVERNING THE PUBLIC CONSTRUCTION LAWS TO PROVIDE FOR EFFICIENCIES AND FLEXIBILITY IN BUILDING DESIGN, CONSTRUCTION, AND PLAN REVIEW, TO PROMOTE ENERGY EFFICIENCY IN STATE-OWNED BUILDINGS, AND TO AMEND THE LAW GOVERNING LANDSCAPE ARCHITECTURE.

☐ 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 adopt the Conference Report.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 623

Senate Judiciary I Committee Substitute Adopted 9/4/01

Proposed Conference Committee Substitute H623-PCCS4289-RUx-2

Short Title: State Energy Conservation Program. (Public)

Sponsors:

Referred to:

March 15, 2001

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ENERGY EFFICIENCY IN STATE-OWNED BUILDINGS.

The General Assembly of North Carolina enacts:

SECTION 1. The title of Part 2 of Article 3B of Chapter 143 of the General Statutes reads as rewritten:

"Part 2. Guaranteed Energy Savings Contracts for ~~Local~~ Governmental Units."

SECTION 2. G.S. 143-64.17 reads as rewritten:

"**§ 143-64.17. Definitions.**

As used in this Part:

(1) "Energy conservation measure" means a facility alteration, training, or services related to the operation of the facility, when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption.

c. Automatic energy control systems.

d. Heating, ventilating, or air-conditioning system modifications or replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or

local building code or is required by the light system after the proposed modifications are made.

f. Energy recovery systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings.

h. Other energy conservation measures.

(2) "Energy savings" means a measured reduction in fuel costs, energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel costs, energy costs, or operating costs developed by the ~~local~~ governmental unit.

(2a) "Governmental unit" means either a local governmental unit or a State governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a ~~local~~ governmental unit by way of a published notice that includes the following:

a. The name and address of the ~~local~~ governmental unit.

b. The name, address, title, and telephone number of a contact person in the ~~local~~ governmental unit.

c. Notice indicating that the ~~local~~ governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.

d. The date, time, and place where proposals must be received.

e. The evaluation criteria for assessing the proposals.

f. A statement reserving the right of the ~~local~~ governmental unit to reject any or all the proposals.

g. Any other stipulations and clarifications the ~~local~~ governmental unit may require.

(7) "State governmental unit" means the State or a department, an agency, a board, or a commission of the State, including the Board of Governors of The University of North Carolina and its constituent institutions."

SECTION 3. G.S. 143-64.17A reads as rewritten:

"**§ 143-64.17A. Solicitation of guaranteed energy savings contracts.**

(a) Before entering into a guaranteed energy savings contract, a ~~local~~ governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is ~~responsible.~~responsible or, in the case of a State governmental unit, in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by any ~~governing body~~ governmental unit unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the ~~governing body of the local~~ governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the ~~governing body~~governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The ~~local~~ governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, ~~and~~ debt service, and estimates of energy savings.

(c) ~~Proposals~~ In the case of a local governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

(1) The information required in subsection (b) of this section; and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(c1) In the case of a State governmental unit, proposals received pursuant to this section shall be opened by a member or an employee of the State governmental unit at a public opening and the contents of the proposals shall be announced at this opening. Proposals shall be evaluated for the State governmental unit by a licensed architect or engineer who is either privately retained, employed with the Department of Administration, or employed as a member of the staff of the State governmental unit.

The proposal shall be evaluated on the basis of the information required in subsection (b) of this section and the criteria stated in the request for proposals.

The State governmental unit shall require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the State governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the State governmental unit or the qualified provider. The Department of Administration may charge the State governmental unit a reasonable fee for the evaluation of the proposal if the Department's services are used for the evaluation and the cost paid by the State governmental unit to the Department of Administration shall be calculated in the cost of the proposal under this subsection.

(d) The ~~local~~ governmental unit shall select the qualified provider that it determines to best meet the needs of the ~~local~~ governmental unit by evaluating all of the following:

(1) Prices ~~offered;~~offered.

(2) Proposed costs of construction, financing, maintenance, and ~~training;~~training.

(3) Quality of the products ~~proposed;~~proposed.

(4) Amount of energy ~~savings;~~savings.

(5) General reputation and performance capabilities of the qualified ~~providers;~~providers.

(6) Substantial conformity with the specifications and other conditions set forth in the request for ~~proposals;~~proposals.

(7) Time specified in the proposals for the performance of the ~~contract; and~~contract.

(8) Any other factors the ~~local~~ governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of ~~local~~ governmental units as set forth in Article 3D of this Chapter."

SECTION 4. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A ~~local~~ governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed 12 years from the date of the installation and acceptance by the ~~local~~ governmental unit of the energy conservation measures provided for under the contract.

(2) The ~~local~~ governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the ~~local~~ governmental unit shall provide published notice of the time and place or of the meeting at which it proposes to award the contract, the names of the parties to the proposed

contract, and the contract's purpose. The notice must be published at least 15 days before the date of the proposed award or meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the ~~local~~ governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the ~~local~~ governmental unit have not been made, the ~~local~~ governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the ~~local~~ governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the ~~local~~ unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract."

SECTION 5. G.S. 143-64.17C is repealed.

SECTION 6. G.S. 143-64.17D reads as rewritten:

"**§ 143-64.17D. Contract continuance.**

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a ~~debt, liability, or obligation of any local governmental unit or a~~ direct or indirect pledge of the taxing power or full faith and credit of any ~~unit of local government.~~governmental unit."

SECTION 7. Part 2 of Article 3B of Chapter 143 of the General Statutes is amended by adding the following new section to read:

"**§ 143-64.17F. State agencies to use contracts when feasible.**

State governmental units shall evaluate the use of guaranteed energy savings contracts in reducing energy costs and may use those contracts when feasible and practical. The Department of Administration, through the State Energy Office, shall adopt rules for agency evaluation of guaranteed energy savings contracts. Prior to adopting any rules pursuant to this section, the Department shall consult with and obtain approval of those rules from the State Treasurer."

SECTION 8. Part 2 of Article 3B of Chapter 143 of the General Statutes is amended by adding the following new sections to read:

"**§ 143-64.17H. Guaranteed energy savings contract reporting requirements.**

A State governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the State Energy Office of the Department of Administration within 30 days of the date the contract is entered into. In

addition, within 60 days after each annual anniversary date of a guaranteed energy savings contract, the State governmental unit must report the status of the contract to the State Energy Office, including any details required by the State Energy Office. The State Energy Office shall compile the information for each fiscal year and report it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission annually by December 1. In compiling the information, the State Energy Office shall include information on the energy savings expected to be realized from a contract and shall evaluate whether expected savings have in fact been realized.

"**§ 143-64.17I. Installment and lease purchase contracts.**

A local governmental unit may provide for the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease purchase contracts in accordance with and subject to the provisions of G.S. 160A-20 and G.S. 160A-19, as applicable.

"**§ 143-64.17J. Financing by State governmental units.**

State governmental units may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part in the manner and to the extent set forth in Article 8 of Chapter 142 of the General Statutes or as otherwise authorized by law.

"**§ 143-64.17K. Inspection and compliance certification for State governmental units.**

The provisions of G.S. 143-341(3) shall not apply to any energy conservation measure for State governmental units provided pursuant to this Part, except as specifically set forth in this section. Except as otherwise exempt under G.S. 116-31.11, the following shall apply to all energy conservation measures provided to State governmental units pursuant to this Part:

(1) The provisions of G.S. 133-1.1.

(2) Inspection and certification by:

a. The applicable local building inspector under Part 4 of Article 18 of Chapter 153A of the General Statutes or Part 5 of Article 19 of Chapter 160A of the General Statutes; or

b. At the election of the State governmental unit, the Department of Administration under G.S. 143-341(3)d.

The cost of compliance with this section may be included in the cost of the project in accordance with G.S. 143-64.17A(c1) and may be included in the cost financed under Article 8 of Chapter 142 of the General Statutes."

SECTION 9. Chapter 142 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"State Energy Conservation Finance Act.

"**§ 142-60. Short Title.**

This Article is the State Energy Conservation Finance Act.

"**§ 142-61. Definitions.**

The following definitions apply in this Article:

(1) Certificates of participation. – Certificates or other instruments delivered by a special corporation as provided in this Article evidencing the assignment of proportionate and undivided interests in the rights to receive payments to be made by the State pursuant to one or more financing contracts.

(2) Cost. – The term includes:

a. The cost of construction, modification, rehabilitation, renovation, improvement, acquisition, or installation in connection with an energy conservation measure.

b. The cost of engineering, architectural, and other consulting services as may be required, including the cost of performing the technical analysis in accordance with G.S. 143-64.17A and inspection and certification in accordance with G.S. 143-64.17K.

c. Finance charges, reserves for debt service and other types of reserves required pursuant to a financing contract or any other related documentation, and interest prior to and during construction, and, if deemed advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.

d. Administrative expenses and charges.

e. The cost of bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, financial and legal consultants, and related costs of the incurrence or issuance of the financing contract to the extent and as determined by the State Treasurer.

f. The cost of reimbursing the State for payments made for any costs described in this subdivision.

g. Any other costs and expenses necessary or incidental to implementing the purposes of this Article.

(3) Credit facility. – An agreement that:

a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and

b. Provides for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest with respect to any financing contract payable on demand or tender by the owner in consideration of the State agreeing to repay the provider of the

credit facility in accordance with the terms and provisions of the agreement.

(4) Energy conservation measure. – Defined in G.S. 143-64.17.

(5) Energy conservation property. – Buildings, equipment, or other property with respect to which an energy conservation measure is undertaken.

(6) Financing contract. – An installment financing contract entered into pursuant to the provisions of this Article to finance the cost of an energy conservation measure.

(7) Person. – An individual, a firm, a partnership, an association, a corporation, a limited liability company, or any other organization or group acting as a unit.

(8) Special corporation. – A nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of facilitating the incurrence of certificates of participation indebtedness by the State under this Article.

(9) State governmental unit. – Defined in G.S. 143-64.17.

(10) State Treasurer. – The incumbent Treasurer, from time to time, of the State.

"**§ 142-63. Authorization of financing contract.**

Subject to the terms and conditions set forth in this Article, a State governmental unit that has solicited a guaranteed energy conservation measure pursuant to G.S. 143-64.17A or G.S. 143-64.17B or the State Treasurer, as designated by the Council of State, is authorized to execute and deliver, for and on behalf of the State of North Carolina, a financing contract to finance the costs of the energy conservation measure. The aggregate principal amount payable by the State under financing contracts entered pursuant to this Article shall not exceed fifty million dollars ($50,000,000) at any one time.

"**§ 142-64. Procedure for incurrence or issuance of financing contract.**

(a) When a State governmental unit has solicited a guaranteed energy conservation measure, the State governmental unit shall request that the State Treasurer approve the State governmental unit's entering into a financing contract to finance the cost of the energy conservation measure. In connection with the request, the State governmental unit shall provide to the State Treasurer any information the State Treasurer requests in order to evaluate the request. In the event that the State Treasurer determines that financing efficiencies will be realized through the combining of financing contracts, then the State Treasurer is authorized to execute and deliver, for and on behalf of the State of North Carolina, subject to the terms and conditions set forth in this Article, a financing contract for the purpose of financing the cost of the multiple energy conservation measures.

(b) A financing contract may be entered into pursuant to this Article only after all of the following conditions are met:

(1) The Office of State Budget and Management has certified that resources are expected to be available to the State to pay the payments

to fall due under the financing contract as they become due and payable.

(2) The Council of State has approved the execution and delivery of the financing contract by resolution that sets forth all of the following:

a. The not-to-exceed term or final maturity of the financing contract, which shall be no later than 12 years from the date the financing contract is entered.

b. The not-to-exceed interest rate or rates (or the equivalent thereof), which may be fixed or vary over a period of time, with respect to the financing contract.

c. The appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it.

(3) The State Treasurer has approved the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement or any credit facility.

The resolution of the Council of State shall include any other matters the Council of State considers appropriate.

(c) In determining whether to approve a financing contract under subdivision (b)(3) of this section, the State Treasurer may consider the factors the State Treasurer considers relevant in order to find and determine all of the following:

(1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the energy conservation measure.

(2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract are not excessive.

(3) The financing contract can be entered into on terms desirable to the State.

(4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency.

(d) The Office of State Budget and Management is authorized to certify that funds are expected to be available to the State to make the payments due under a financing contract entered into under the provisions of this section as the payments become due and payable. In so certifying, the Office of State Budget and Management may take into account expected decreases in appropriations to the State governmental unit that will offset payments expected to be made under the financing contract.

"**§ 142-65. Security; other requirements.**

(a) In order to secure the performance by the State of its obligations under a financing contract or any other related documentation, the State may grant a lien on, or security interest in, all or any part of the energy conservation property or the land upon which the energy conservation property is or will be located.

(b) No deficiency judgment may be rendered against the State or any State governmental unit in any action for breach of any obligation contained in a financing

contract or any other related documentation, and the taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract or any other related documentation. In the event that the General Assembly does not appropriate funds sufficient to make payments required under a financing contract or any other related documentation, the net proceeds received from the sale, lease, or other disposition of the property subject to the lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy these payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are hereby appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under the financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

(c) Neither a financing contract nor any other related documentation shall contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any State property that is the subject of an energy conservation measure.

(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to it, appropriations necessary to make the payments required under the financing contract.

(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the person advancing moneys or providing funds under the financing contract that are reasonable and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under a financing contract may be applied, and the duties of the State with respect to the property subject to the lien or security interest created pursuant to subsection (a) of this section, including, without limitation, provisions relating to insuring and maintaining any property and the custody, safeguarding, investment, and application of moneys.

(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the payments due under a financing contract or to secure payment of the purchase price of any certificates of participation delivered as provided in this Article.

"**§ 142-66. Payment provisions.**

The payment of amounts payable by the State under a financing contract and any other related documentation during any fiscal biennium or fiscal year shall be limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this Article and no financing contract or any other related documentation shall be construed or interpreted as creating a pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation.

"**§ 142-67. Certificates of participation.**

(a) If the State Treasurer determines that the State would realize debt service savings under one or more financing contracts if certificates of participation are issued with respect to the rights to receive payments under the financing contract, then the State Treasurer is authorized to take actions, with the consent of the Council of State, that will effectuate the delivery of certificates of participation for that purpose.

(b) Terms; Interest. – Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this Article, except that the terms of the sale must also be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

(c) Trust Agreement. – Certificates of participation may be delivered pursuant to a trust agreement or similar instrument with a corporate trustee approved by the State Treasurer.

"**§ 142-68. Tax exemption.**

Any financing contract entered pursuant to this Article, and any certificates of participation relating to it, shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, and gift taxes; income taxes on the gain from the transfer of the financing contract or certificates of participation; and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income.

"**§ 142-69. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, credit enhancement facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with entering into financing contracts and issuing certificates of participation pursuant to this Article. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, fiduciaries, and bond attorneys to be associated with any financing contracts or certificates of participation under this Article as the State Treasurer considers appropriate.

"**§ 142-70. Investment eligibility.**

Financing contracts entered into pursuant to this Article, and any certificates of participation relating to them, are securities or obligations in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions; insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, and other financial institutions engaged in business in the State; and executors, administrators, trustees, and other fiduciaries. Financing contracts entered pursuant to this Article, and any certificates of participation relating to them, are securities or obligations that may

properly and legally be deposited with and received by any officer or agency of the State or any political subdivision of the State for any purpose for which the deposit of bonds, notes, or obligations of the State or any political subdivision is now or may later be authorized by law."

SECTION 10. G.S. 160A-20(h) reads as rewritten:

"(h) As used in this section, the term 'unit of local government' means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(3a) A metropolitan sewerage district created under Article 5 of Chapter 162A of the General Statutes.

(3b) A sanitary district created under Part 2 of Article 2 of Chapter 130A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 63-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, ~~1995; provided~~ 1995, except that the authority granted by this ~~section~~ subdivision may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit whose board of education is authorized to levy a school tax.

(6a) Any other local school administrative unit, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(6b) A community college, but only for the purpose of financing energy conservation measures acquired pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(9) Repealed by Session Laws 2001-414, s. 52, effective September 14, 2001.

(10) A regional natural gas district, as defined by Article 28 of this Chapter.

(11) A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of this Chapter.

(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39."

SECTION 11. G.S. 143-129.4 reads as rewritten:

"**§ 143-129.4. Guaranteed energy savings contracts.**

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are ~~governed solely~~ not governed by this Article but instead are governed by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of ~~G.S. 143-128.2.~~G.S. 143-128.2 and G.S. 143-135.3."

SECTION 11.1. G.S. 133-4.1 reads as rewritten:

"**§ 133-4.1. Guaranteed energy savings contracts.**

Except for ~~G.S. 133-1.1,~~G.S. 133-1 and 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes."

SECTION 12. Nothing in this act limits the use of any method of contracting authorized by local law or other applicable laws.

SECTION 13. This act becomes effective January 1, 2003, and applies to contracts entered into on or after that date.

HOUSE BILL 623 (PCCS): State Energy Conservation Program

BILL ANALYSIS

Committee: House Finance
Date: September 25, 2002
Version: Conference Agreement

Sponsor:
Analysis by: Martha H. Harris
Staff Attorney

SUMMARY: Authorizes the State to enter into up to $50 million of installment finance contracts to finance guaranteed energy savings measures. Under current law, local governments have the authority to enter into these contracts.

The proposed conference committee substitute for House Bill 623 is in House Finance for a recommendation as to whether or not the House should concur with the changes made by the conferees.

Since 1994, local governments have had the authority to enter into financing contracts to finance the cost of energy conservation measures. This authority is in Part 2 of Article 3B of G.S. Chapter 143. An energy conservation measure is an alteration, training, or services that will provide anticipated energy savings with respect to a facility. The financing contracts are known as guaranteed energy savings contracts. Under the contract to implement energy conservation measures, all payments, except obligations on early termination, are to be made over time and energy cost savings are guaranteed to exceed the cost of the contract. Local governments use installment purchase contracts to finance these expenditures. The authority for this type of local government debt is found generally in G.S. 160A-20 and, specifically with respect to guaranteed energy savings contracts, in G.S. 143-64.17C. The law provides that a guaranteed energy savings contract is not a pledge of the government's taxing power.

This bill would extend to State agencies the authority to enter into guaranteed energy savings contracts. The act provides that the State will use generally the same procedures for soliciting the contracts that apply to local governments under current law. The State Energy Office of the Department of Administration is required to adopt rules for agencies to follow in evaluating the contracts, subject to approval by the State Treasurer. State agencies that enter into guaranteed energy savings contracts are required to report to the State Energy Office which in turn reports annually to the Joint Legislative Commission on Governmental Operations. The bill clarifies that State energy conservation measures are subject to inspection and compliance by the State Construction Office or the local building inspector. The bill provides that the cost of the evaluation of the contract by either an independent architect or engineer, or by the State Construction Office, and the costs of the necessary building inspections, shall be included in the cost of the contract.

Unlike local governments, State agencies do not have general authority to enter into debt in the form of installment purchase contracts. For this reason, Section 9 of the bill adds a new Article to Chapter 142 of the General Statutes providing the authority for State agencies to

incur this type of debt. The aggregate principal amount payable by the State under these contracts is limited to $50 million. The debt is secured by a lien on or a security interest in any part of the property with respect to which an energy conservation measure is undertaken and/or the land upon which the property is or will be located.

There would be no pledge of the State's faith and credit or taxing power. Thus, voter approval is not necessary for the borrowing. If the State defaulted on its repayments, no deficiency judgment could be rendered against the State, but the property that serves as security could be disposed of to generate funds to satisfy the debt. The State could choose not to appropriate funds to repay the debt, but such a decision would have negative consequences for the State's credit rating.

Under the bill, the funds could be borrowed from the vendor with whom the agency contracts, or could be borrowed through the sale of certificates of participation (COPs). In a typical COPs transaction, a nonprofit corporation is organized for the purpose of entering into the installment purchase contract with the State. The nonprofit corporation then raises capital for the energy conservation measure being purchased by the State by assigning or participating out its rights to receive the installment payments to be made by the State pursuant to the contract. COPs are certificates that evidence that assignment of the rights to receive these installment payments; and it is through the sale of COPs to investors that capital is raised to acquire or construct the item being financed.

Before a guaranteed energy savings contract can be entered into, the Office of State Budget and Management must certify that resources are expected to be available to pay the amounts due under the contract. Next, the Council of State must approve the contract by resolution that sets out the maximum maturity, and the maximum interest rates. The maximum maturity may not exceed 12 years. The State Treasurer also must approve the financing, finding that the amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment, and that the special indebtedness can be incurred or issued on terms favorable to the State.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB623 (PCCS- H623-PCCS4289-RUx-2)

SHORT TITLE: State Energy Conservation Program

SPONSOR(S): Rep. McMahan

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
EXPENDITURES		See Assumptions and Methodology			
General Fund					
Debt Service Requirement		$3,437,500	$6,837,650	$6,606,650	$6,375,650
Energy Savings		($3,437,500)	($6,837,650)	($6,606,650)	($6,375,650)
Net GF Impact		$0	$0	$0	$0

POSITIONS:

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Administration's State Energy Office, State Construction Office and Division of Purchase and Contract; Department of State Treasurer, and all State governmental units.

EFFECTIVE DATE: January 1, 2003 and applies to contracts entered into on or after that date.

BILL SUMMARY:

This bill amends the Guaranteed Energy Savings Contract law to make it applicable to State governmental units. Currently, the law only applies to local governments. Section 3 amends G.S. § 143-64.17 to outline the requirements for the evaluation of proposals in the case of a State governmental unit. Section 7 requires State governmental units to use guaranteed energy savings contracts when feasible. Section 8 outlines the guaranteed energy savings contract reporting requirements; authorizes local governmental units to use lease purchase and installment contracts to provide for acquisition, installation, or maintenance of energy conservation measures; authorizes State governmental units to finance the acquisition, installation, or maintenance of energy conservation measures; and outlines the existing statutes on inspection and compliance certification that are applicable to guaranteed energy savings contracts. Section 9 of the bill amends Chapter 142 of the General Statutes by adding Article 8 as the State Energy Conservation Finance Act. This article governs the authorization of finance contracts, the procedures for incurrence or issuance of financing contracts, the granting of security for financing contracts, payment provisions, the issuance of certificates of participation, the tax

status of the financing instruments, the authorization to enter into other agreements related to the financing contracts or certificates of participation, and the investment eligibility of the financing instruments. Section 11 exempts the solicitation and evaluation of proposals for guaranteed energy savings contracts from the provisions of the Public Contracts Article of Chapter 143, except that the guaranteed energy savings contracts are subject to the minority participation requirements of G.S. § 143-128.2 and the adjustment and resolution of State board construction contract claims requirements of G.S. § 143-135.3.

ASSUMPTIONS AND METHODOLOGY:

This bill allows State governmental units, which include the State or a department, an agency, a board, or commission of the State, including the Board of Governors of the University of North Carolina and its constituents, to enter into guaranteed energy savings contracts. As defined in the bill, a guaranteed energy savings contract is a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed cost.

The potential effect of expanding the statute to require State governmental units to evaluate the use of guaranteed energy savings contracts and to authorize them to use such contracts when feasible is to increase the use of such contracts. Increasing the use of guaranteed energy savings contracts potentially will (1) increase the resources required to evaluate the use of the contracts and whether expected savings were realized (State governmental units and the State Energy Office), (2) increase the resources required to process the procurement of third party financing (Purchase and Contract and the Dep't of State Treasurer) and the additional requisitions for the purchase of equipment and materials for the guaranteed energy savings measures (Purchase and Contract), (3) increase the resources required to review plans and specifications for those measures that involve renovations to State buildings as well as to supervise and inspect the renovation work (Office of State Construction), (4) decrease the State funded resources required for energy expenditures (State governmental units), and (5) increase the State's debt burden.

The Fiscal Research Division's best estimate of the extent of the use of guaranteed energy savings contracts is based on the State's current repair and renovation needs as determined from a review of the Facilities Condition Assessment Program Report (FCAP) and the State's Six-Year Capital Improvement Plan (CIP). The Office of State Construction operates a Facilities Condition Assessment Program through which it maintains an automated inventory of all facilities owned by State agencies. As required by G.S. § 143-34.42, the inventory includes the location, occupying agency, ownership, size, description, condition assessment, maintenance record, parking and employee facilities, and other information to determine maintenance needs and prepare life-cycle cost evaluations of each facility listed in the inventory. The inventory is updated every three years. The CIP includes each agency's anticipated capital needs for each year of the six-year period. The CIP specifically identifies those requirements for repairs and renovations necessary to maintain the use of existing facilities. Each item in the CIP references the FCAP.

According to the *Inventory of Capital Improvement Requests for State Government, Six Year Summary for FY 2001-2007* prepared by the Fiscal Research Division in December 2001, there are approximately $1.2 billion in repair and renovation needs statewide, including the universities. The Office of State Construction has identified energy related projects in the most recent FCAP report totaling $30 million. We also believe these projects could qualify for financing under this bill. While we recognize that not all of these projects would qualify, we also recognize the possibility that there are projects that are not on the list that could qualify for financing under this bill. The bill allows up to $50 million in guaranteed energy savings measures to be financed at any one time. Our best estimate, therefore, is that there will be between $30 million and $50 million in guaranteed energy savings projects.

Debt Burden

The bill provides that the aggregate principal amount payable under the financing contracts cannot exceed $50 million at any one-time. At the request of Fiscal Research, the Department of State Treasurer developed a debt service schedule for $25 million of financing through certificates of participation that would be issued on June 1, 2003 and another $25 million on the same date in 2004. The simulation assumed that the debt would be repaid over 12 years and that the average interest rate would be 5.35% on the 2003 issue and 5.65% on the 2004 financing. This would result in gross debt service requirements of $3.4 million for FY04, $6.8 million in FY05, and then declining amounts in future years. The total interest payments over the life of the $50 million debt would be $17.8 million. Thus, the total debt service requirements would amount to $67.8 million over a 13-year period. Please note that the simulation assumes full utilization of the $50 million authorization and specific timing for the issuance of the financing instruments. While we estimate that there are, ***at a minimum,*** $30 million in repair and renovation projects that could qualify for financing under a guaranteed energy savings contract, at this point Fiscal Research has no way to predict how much of the authorization will be used and when the instruments will be issued.

This debt from the financing of the guaranteed energy savings measures would count as part of the State's debt burden and therefore ultimately impact the State's credit rating. Though it is anticipated that the energy savings will be sufficient to pay debt service costs, in the event actual savings are not sufficient to cover debt service or are not restricted to meeting the debt service requirements, the State would continue to have a limited liability for the debt. We cannot estimate how much the State's debt burden and credit rating will be impacted by the guaranteed energy savings contracts.

Energy Savings

As noted above, we estimate that there will be between $30 million and $50 million in guaranteed energy savings measures at any one time. The debt service requirements over the repayment period on $50 million, assuming $25 million would be issued in each of the next two years, would amount to $67.8 million. By definition of a guaranteed energy savings contract, savings in the form of reduction in fuel costs, energy costs, or operating costs are expected to exceed the cost of implementing the measures. Therefore, assuming the full authorization is used, we expect that over the same 13-year period as the debt repayment, the total savings will exceed $67.8 million. On an annual basis, the savings should equal or exceed the annual debt service requirements. However, we cannot estimate the extent to which the annual savings will exceed the annual debt service requirement.

Adoption of Rules

The bill requires the Department of Administration, through the State Energy Office, to adopt rules for agency evaluation of guaranteed energy savings contracts after consulting with and obtaining the approval of the State Treasurer. The Department of Administration has an attorney on staff whose responsibilities include drafting rules. The Fiscal Research Division believes that the Department can factor the drafting of the rules into the workload priority for the attorney and would, therefore, not need any additional resources to fulfill this requirement of the bill.

Reporting Requirements

The bill requires State governmental units to report the contract terms to the State Energy Office and to annually report the status of the contract including any details required by the State Energy Office. The State Energy Office is responsible for compiling the information and reporting it to the Joint Legislative Commission on Governmental Operations and to the Local Government Commission. These new reporting requirements will increase the workload for the State Energy Office. However, without a better estimate on the use of the guaranteed energy savings contracts, we cannot estimate the extent of the increased workload or the number, if any, of additional positions that would be needed to satisfy the reporting and evaluation requirements.

The Fiscal Research Division notes that the State Energy Office estimates that it will need four additional positions and operating costs based on its assumption that the State Energy Office would have the responsibility for setting up the rules, developing a standard request for proposal, working with all of the State agencies and universities on the process, overseeing the contracts, subbing measuring and verifying tasks to a third party, monitoring those subcontracts, and performing quality checks on the construction and performance. The Fiscal Research Division believes that these responsibilities, other than the adoption of the rules, are beyond what the bill requires the State Energy Office to do. Thus, we cannot agree with its estimate that four additional positions and operating costs are needed.

Operating Resources- Purchase and Contract

As noted above, the projects that are potentially eligible for financing under this bill are projects that are currently on the State's repair and renovation list. Typically, repair and renovation projects are funded with State appropriations. Administering these projects is included in the normal responsibilities of Purchase and Contract (P&C). To the extent that the guaranteed energy savings projects are the same as the energy related projects on the State's repair and renovation list, this bill does not increase these responsibilities any more than if the projects were funded with State-appropriated repair and renovation funds. Therefore, Fiscal Research believes that no additional resources are needed for P&C to fulfill it responsibilities for processing requisitions for additional equipment and materials.

Operating Resources- Office of State Construction

Fiscal Research believes for the reasons noted below that no additional resources are needed for State Construction as it relates to administering guaranteed energy savings contracts.

First, as with P&C noted above, to the extent that the guaranteed energy savings projects are the same as the energy related projects on the State's repair and renovation list, this bill does not increase State Construction's responsibilities any more than if the projects were funded with State-appropriated repair and renovation funds because administering these projects are within the normal responsibilities of State Construction.

Second, as provided for in Section 3 of the bill, any cost incurred by the Department of Administration in the evaluation of proposals can be charged to the State governmental unit who requested the proposal and any costs paid by the State governmental unit shall be included in the cost of the proposal. Specifically, Section 3 amends G.S. § 143-64.17A by adding a subsection that provides that in the case of a State governmental unit, any proposal for a guaranteed energy savings contract shall be evaluated by a licensed architect or engineer who is either privately retained, employed by the Department of Administration, or employed as a member of the staff of the State governmental unit. The Department of Administration may charge the State governmental unit if the Department's services are used for the evaluation and the State governmental unit shall include the cost charged by the Department in the cost of the proposal. A qualified provider of a guaranteed energy savings contract must include, in calculating the cost of a proposal, any reasonable fees payable by the State governmental unit. **Thus, whether the Department of Administration participates in the evaluation of any proposals appears to be at the option of the State governmental unit.** Fiscal Research has no basis for estimating how often the Department will evaluate proposals. Further, any cost incurred by the Department may be charged to the State governmental unit and financed as part of the cost of the proposal.

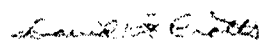
Third, Section 8 of the bill adds G.S. § 143-64.17K which provides that the architecture and engineering powers and duties of the Department of Administration ***shall not*** apply except that a State Governmental unit may elect to have an inspection and certification by the Department of Administration under G.S. § 143-341(3)d. (Note that G.S. § 143-341(3)d requires the Department of Administration to supervise and inspect all work done and materials used in the construction or renovation of all State buildings and all community college buildings whose plans and specifications must be examined and approved under § 143-341(3)(a.2); and no such work may be accepted by the State or by any State agency until it has been approved by the Department.) Again, Fiscal Research has no basis for estimating how often the Department will supervise and inspect the work done and materials used in a guaranteed energy savings projects. Any cost incurred by the Department related to supervision and inspection may be financed as part of the cost of the proposal.

SOURCES OF DATA: Office of State Treasurer.

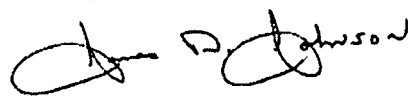
TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Marilyn Chism, David Crotts, Mona Moon



APPROVED BY: James D. Johnson



DATE: September 23, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Senate Committee Substitute for
H.B. 1670 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE EXPENSE ATTRIBUTION LAW AS IT APPLIES TO DEDUCTIBLE DIVIDENDS AND TO PROVIDE LIMITS ON THE POTENTIAL TAX LIABILITY.

☐ 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 Senate 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 4

HOUSE BILL 1670

Committee Substitute Favorable 7/18/02
Third Edition Engrossed 7/24/02
Senate Finance Committee Substitute Adopted 9/24/02

Short Title: Subsidiary Dividend Changes. (Public)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE EXPENSE ATTRIBUTION LAW AS IT APPLIES TO DEDUCTIBLE DIVIDENDS AND TO PROVIDE LIMITS ON THE POTENTIAL TAX LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-130.5(c)(3) reads as rewritten:

"(c) The following other adjustments to federal taxable income shall be made in determining State net income:

...

(3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). G.S. 105-130.6A applies to the adjustment for expenses related to dividends received that are not taxed under this Part."

SECTION 2. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.6A. Adjustment for expenses related to dividends.**

(a) Definitions. – The provisions of G.S. 105-130.6 govern the determination of whether a corporation is a subsidiary or an affiliate of another corporation. In addition, the following definitions apply in this section:

(1) Affiliated group. – A group that includes a corporation, all other corporations that are affiliates or subsidiaries of that corporation, and all other corporations that are affiliates or subsidiaries of another corporation in the group.

(2) Bank holding company. – A holding company with an affiliate that is subject to the privilege tax on banks levied in G.S. 105-102.3.

(3) Dividends. – Dividends received that are not taxed under this Part.

(4) Electric power holding company. – A holding company with an affiliate or a subsidiary that is subject to the franchise tax on electric power companies levied in G.S. 105-116.

(5) Expense adjustment. – The adjustment required by G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part.

(6) Holding company. – Defined in G.S. 105-120.2.

(b) General Rule. – For corporations other than bank holding companies and electric power holding companies, the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to fifteen percent (15%) of the dividends.

(c) Bank Holding Companies. – For bank holding companies the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to twenty percent (20%) of the dividends.

(d) Electric Power Holding Companies. – For electric power holding companies, the adjustment under G.S. 105-130.5(c)(3) for expenses related to dividends not taxed under this Part may not exceed an amount equal to fifteen percent (15%) of its total interest expenses.

(e) Cap for Bank Holding Companies. – After calculating the expense adjustment as provided in subsection (c) of this section, each bank holding company must calculate the amount of additional tax that results from the expense adjustments for the holding company and for every corporation in the holding company's affiliated group for the taxable year. If the expense adjustments result in additional tax exceeding eleven million dollars ($11,000,000) for a taxable year for the affiliated group, the affiliated group may reduce the amount of the expense adjustment so that the resulting additional tax does not exceed this maximum. This maximum applies once to each affiliated group each taxable year, whether or not the group includes more than one bank holding company.

The members of the affiliated group may allocate this reduction among themselves in their discretion. In order to take this reduction, each member of the affiliated group that is required to file a return under this Part and that has dividends for the taxable year must provide a schedule with its return that lists every member of the group that has dividends, the amount of the dividends, and whether the member is a bank holding company. In addition, the schedule must show the expense adjustments for those members whose additional tax as a result of the expense adjustment constitutes the maximum amount. In addition, each member must provide any other documentation required by the Secretary.

If the expense adjustment for an affiliated group is reduced under this subsection, and the return of a member of the group is later changed in a manner that reduces below the maximum the amount of additional tax for the group resulting from the expense adjustment, the Secretary may increase the expense adjustment for any member of the group in order to increase to the maximum the amount of additional tax for the group resulting from the expense adjustment. In this situation, the amount of the increase is

considered a forfeited tax benefit with respect to the affiliated group for the purposes of G.S. 105-241.1(e). The date of the forfeiture is the date of the change that triggers the Secretary's authority to increase the expense adjustment. Any member whose expense adjustment the Secretary increases is liable for interest on the amount of the increase at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the expense adjustment had been calculated correctly on the original return. The amount of the increase and the interest are due 60 days after the date of the forfeiture. A taxpayer that fails to pay the amount of the increase and interest by the due date is subject to the penalties provided in G.S. 105-236.

(f) Credits for Bank Holding Companies. – If the affiliated group of which a bank holding company is a member is eligible for the reduction provided in subsection (e) of this section for a taxable year, the affiliated group is also eligible for a credit equal to two million dollars ($2,000,000). If the affiliated group of which a bank holding company is a member is not eligible for the reduction provided in subsection (e) of this section for a taxable year, the affiliated group is eligible for a credit equal to the amount of additional tax that results from its expense adjustments in excess of the amount of additional tax that would result from the expense adjustments if the expense adjustment of any bank holding company in the group were equal to fifteen percent (15%) of the holding company's dividends for that taxable year.

A credit allowed by this subsection may be taken in four equal, annual installments beginning with the later of the following taxable year or the taxpayer's taxable year beginning in 2003. The members of the affiliated group may allocate a credit allowed by this subsection among themselves in their discretion.

(g) Credit for Electric Power Holding Companies. – After calculating the adjustment for expenses related to dividends under G.S. 105-130.5(c)(3), each electric power holding company must calculate the amount of additional tax under this Part that results from the expense adjustment for the taxable year. The electric power holding company is allowed a credit for the following taxable year equal to one-half of this amount of additional tax.

As an alternative to taking this credit against its own tax liability, an electric power holding company may elect to allocate the credit among the members of its affiliated group. In this case, the credit must be taken in four equal installments beginning in the later of the following taxable year or the taxable year for which the taxpayer's final return is due in 2004.

(h) Limitation on Credits. – The credits provided in this section are allowed against the tax levied in this Part and the franchise tax levied in Article 3 of this Chapter. A taxpayer may claim a credit against only one of the taxes against which it is allowed. Each taxpayer must elect the tax against which the credit will be taken when filing the return on which the first installment of the credit is claimed. This election is binding. All installments and carryforwards of the credit must be taken against the same tax.

In order for a member of an affiliated group to take a credit, each member of the affiliated group that is required to file a return under this Part or under Article 3 of this Chapter must attach a schedule to its return that shows for every member of the group

the amount of the credit taken by it, the tax against which it is taken, and the amount of the resulting tax. In addition, each member must provide any other documentation required by the Secretary.

A credit allowed in this section may not exceed the amount of tax against which it is taken for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward to succeeding taxable years."

SECTION 3. G.S. 105-130.8(a)(5) reads as rewritten:

"(a) Net economic losses sustained by a corporation in any or all of the 15 preceding income years shall be allowed as a deduction to the corporation subject to the following limitations:

...

(5) For purposes of this section, any income item deductible in determining State net income under the provisions of G.S. 105-130.5 and any nonbusiness income not allocable to this State under the provisions of G.S. 105-130.4 shall be considered as income not taxable under this Part. The amount of the income item considered income not taxable under this Part is determined after subtracting related expenses for which a deduction was allowed under this Part."

SECTION 4. G.S. 105-130.5(b)(3a) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(3a) Dividends treated as received from sources outside the United States as determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section and G.S. 105-130.6A."

SECTION 5. It is the intent of the General Assembly that the provisions of this act are to remain in effect for taxable years beginning in 2001 and 2002. The Revenue Laws Study Committee shall study the treatment of expenses related to dividends received and other income not taxed and the taxation of affiliated corporations, of holding companies, and of financial institutions under current law. The Committee shall report to the 2003 General Assembly its recommendations for modifying the provisions of this act and other provisions of the taxes on corporations and businesses in order to provide for a more equitable and stable source of revenue. It is the intent of the General Assembly to address the issues raised by this act during the 2003 Regular Session and enact changes effective for taxable years beginning on or after January 1, 2003.

SECTION 6.(a) If a taxpayer meets the condition set out in subsection (c) of this section, then, notwithstanding G.S. 105-163.41, no addition to tax may be made under that statute for a taxable year beginning on or after January 1, 2002, and before January 1, 2003, with respect to an underpayment of corporate income tax to the extent

the underpayment was created or increased by Section 3 of S.L. 2001-327. This subsection does not apply to any underpayment of an installment of estimated tax that is due more than 15 days after the date this act becomes law.

SECTION 6.(b) If a taxpayer meets the condition set out in subsection (c) of this section, then, notwithstanding G.S. 105-236(4), the penalty under that statute for a taxable year beginning on or after January 1, 2001, and before January 1, 2002, is waived with respect to failure to pay an amount of corporate income tax due to the extent the amount of tax due was created by Section 3 of S.L. 2001-327. This subsection does not apply to any amount of corporate income tax that was due more than 15 days after the date this act becomes law.

SECTION 6.(c) In order to qualify for the benefit of this section, a taxpayer must pay within 15 days after the date this act becomes law all tax due by that date that was created or increased by Section 3 of S.L. 2001-327.

SECTION 7. This act is effective for taxable years beginning on or after January 1, 2001.

HOUSE BILL 1670:
Subsidiary Dividend Changes

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	
Date:	September 26, 2002	**Summary by:**	Cindy Avrette
Version:	4th Edition		Committee Counsel

SUMMARY: ***The Senate Committee Substitute for House Bill 1670 provides certainty and clarity to the expense attribution law as it applies to deductible dividends and provides limits on the potential tax liability. The bill assures the State of the revenues relied upon in its budget availability estimates for 2001 and 2002. Under the bill, the State may expect to receive approximately $57 million a year for 2001, 2002, and 2003 from the taxation of subsidiary dividends. Of this amount, the State expects to receive approximately $80 million in availability for the 2002-03 budget. The bill becomes effective for taxable years beginning on or after January 1, 2001***

House Bill 1670 is back in the House for concurrence with the Senate changes. The original House Bill 1670 contained the House fee provisions. None of the original provisions of House Bill 1670 are in the Senate Committee Substitute. Most of the fee provisions in the original House bill were included in the budget conference committee substitute.

CURRENT LAW: In 2001, the General Assembly enacted legislation conforming to the federal dividends received deduction. The 2001 law eliminated the adjustments that had previously been required to reflect differences between the federal and State dividends deduction. Eliminating the adjustments also made the dividends subject to the N.C. law that expenses related to untaxed income cannot be deducted from taxable income. As a result, expenses related to deductible dividends must be netted from those dividends. The law did not provide guidelines for calculating the amount of expenses that are related to deductible dividends.

Without knowing exactly how to determine the amount of related expenses, taxpayers were faced with uncertainty and potentially greater liability than they had anticipated when the legislation was debated. The new law was expected to have an especially significant impact on bank holding companies and electric power holding companies, because federal law requires them to have multiple subsidiaries.

BILL ANALYSIS: The proposed committee substitute for House Bill 1670 provides clarity to the expense attribution law as it applies to deductible dividends and provides limits on the additional tax liability. These limits are calculated so that the bill should yield revenue at least equal to what had been included in budget availability estimates based on the 2001 law. The bill states the intent of the General Assembly that it will be effective during 2001 and 2002 but will be studied and then revised effective beginning with the 2003 tax year. However, the bill does not sunset. Here is an outline of the bill:

- The adjustment for expenses related to dividends may not exceed the following.
  - Most companies: 15% of dividends
  - Bank holding companies: 20% of dividends
  - Electric power holding companies: 15% of total interest expenses
- The additional tax that a bank holding company and its related companies must pay as a result of the expense netting is subject to a maximum of $11 million per corporate family.

- Bank holding company corporate families also receive a credit beginning in 2003. For bank corporate families that reach the $11 million maximum, the credit is $2 million. For other bank corporate families, the credit is equal to the amount of tax reduction that would result if bank holding companies were subject to a 15% cap rather than a 20% cap. These credits may be taken against income tax or franchise tax and are spread out over four tax years beginning in 2003.
- Electric power holding companies receive a credit equal to one-half of the additional tax that each must pay as a result of the expense netting. The credit is taken in the following year. The credit may be taken against income tax or franchise tax. As an alternative, an electric power holding company may elect to allocate the credit among the members of its affiliated group. If the electric power company makes this election, then the credit is spread out over four tax years, beginning in 2003.

SECTION-BY-SECTION ANALYSIS:

Section 1:	For federal tax purposes, dividends are deductible with no adjustment for related expenses. For State tax purposes, no deduction is allowed for expenses related to nontaxable income. Therefore, for State tax purposes, an adjustment must be made to federal taxable income to add-back any related expenses that were included in the federal deduction. This section provides that not all of the expenses must be added back by establishing a different adjustment for expenses related to dividends received that are not taxed.
Section 2:	This section establishes the adjustment for expenses related to dividends received that are not taxed by providing a cap on the amount of tax payable: 15% of nontax dividends for most companies; 20% of nontax dividends for bank holding companies; and 15% of total expenses for electric power holding companies. The bill also provides a credit for bank holding companies and electric power companies. Any unused portion of the credit may be carried forward to succeeding taxable years.
Section 3:	A conforming change to ensure that related expenses are deducted only once when calculating a corporation's net economic loss.
Section 4:	A conforming change that provides the same tax treatment for foreign source dividends as domestic source dividends.
Section 5:	States the intent of the General Assembly to address the issues raised by this act during the 2003 Regular Session. The Revenue Laws Study Committee is to study the treatment of expenses related to dividends received and other income not taxed, and the taxation of affiliated corporations, of holding companies, and of financial institutions under current law and the Committee is supposed to report its recommendations to the 2003 General Assembly.
Section 6:	Provides that a taxpayer will not be subject to additional tax or to penalties for underpayment of a tax to the extent the underpayment was created or increased by Section 3 of S.L. 2001-327 IF the taxpayer pays all tax due that was created or increased by Section 3 of S.L. 2001-327 within 15 days after the date this act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1670 (4th Edition)

SHORT TITLE: Subsidiary Dividend Changes

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES	"See Assumptions and Methodology"				

PRINCIPAL DEPARTMENTS AFFECTED: The corporate income tax is collected by the Department of Revenue. The enactment of the bill will not affect the department's budget requirements.

EFFECTIVE DATE: Tax years beginning on or after January 1, 2001.

BILL SUMMARY: The 2001 General Assembly enacted legislation conforming state law to the federal rules for the deduction of dividends received. This would apply, for example, to dividends received by a holding company from its subsidiaries. The change eliminated the adjustments that had previously been required to reflect differences between the federal and State dividends deduction.

North Carolina has a general law that disallows the deduction of expenses incurred in earning income that is not taxable. However, there is an **exception to the rule** in cases where the federal and state laws differ regarding the taxability of an income item. Thus, prior to the 2001 changes, companies were able to use the exception to deduct expenses associated with income earned from subsidiaries. However, the adoption of federal conformity for the rules governing the deductibility of dividends effectively eliminated the deduction of expenses associated with subsidiary dividends. This meant that related expenses would have to be netted against the dividends that are deducted.

After the 2001 act was adopted, the Department of Revenue developed rules that companies could use to determine which expenses were associated with the deductible income. Since that time there has been much discussion about whether the Department's rules accurately attribute expenses incurred.

The Proposed Committee Substitute creates new statutory language that clarifies the expense attribution rules and limits the impact of the 2001 change on expense deductibility. Under the bill, the new rules will be in effect for the 2001 and 2002 tax years. For future years, the bill states the intent for the Revenue Laws Study Committee to review the issue and recommend modifications to the system. In addition, the language states that intent for the 2003 General Assembly to address the issues raised by this year's bill.

The new expense attribution rules are as follows:

1. The amount of related expenses that must be netted from deductible dividends is capped as follows:
   - Most companies — 15% of dividends
   - Bank holding companies — 20% of dividends
   - Electric power holding companies — 15% of total interest expenses

2. The additional tax that a bank holding company and its related companies must pay as a result of the expense netting is subject to a maximum of $11 million per corporate family.

3. Bank holding company corporate families receive a tax credit beginning in 2003. For bank corporate families that reach the $11 million cap, the credit is $2 million. For other bank corporate families, the credit is equal to the amount of tax reduction that would result if bank holding companies were subject to a 15% cap rather than a 20% cap. These credits may be taken against income tax or franchise tax and are spread out over four tax years beginning in 2003.

Electric power holding companies receive a credit equal to one-half of the additional tax that each must pay as a result of the expense netting. The credit is taken in the following year. The credit may be taken against income tax or franchise tax. As an alternative, an electric power holding company may elect to allocate the credit among the members of its affiliated group. If this election is made, the credit is spread over four tax years, beginning in 2003.

ASSUMPTIONS AND METHODOLOGY: The Department of Revenue has examined tax year 2000 tax returns from a group of selected large corporations and a sample of several hundred smaller corporations in order to analyze the impact of subsidiary dividends and associated expenses. In addition, Department personnel have had conversations with affected parties. Finally, Fiscal Research has been involved in numerous meetings on the issue with the Department of Revenue and the affected parties.

The 2003 General Assembly just enacted legislation modifying the 2002-03 budget. This package included $50 million in additional budget availability from a re-estimate of the 2001 bill. The adjustment came as a result of numerous discussions with the Department of Revenue and affected parties about the expense attribution rules. During the discussions, it was apparent

that the 2001 session estimate of $32.3 million of impact understated the effect of the indirect change in the expense attribution rules. The reason for the under-estimate is that the Department of Revenue's analysis of the bill, which used confidential tax returns for the 1994 tax year and an update of the 1994 data, did not include financial institutions. The Department feels that if the affected bank holding companies fully comply with the 2001 law and administrative rules, the additional $50 million will be collected during the 2002-03 fiscal years.

Shown below is a comparison of the General Fund revenue anticipated under the original 2001 bill, the 2002 re-estimate, and the current proposal:

Additional General Fund Revenue ($Mil.)				
	01-02	02-03	03-04	04-05
2001 Legislation	30.8	32.3	33.6	34.5
2002 Re-estimate*	30.8	82.3	83.6	84.5
HB 1670**	30.8	82.3	59.9	62.9

* The actual impact per calendar year could be $120 million or more but is heavily dependent of the compliance of taxpayers affected by the 2001 change. The amount shown is the figure used in modifying the 2002-03 budget.

**The analysis indicates that a major portion of the unanticipated 2001 tax year impact will be paid in 2002-03. The same pattern is likely to occur under the annual impact discussed in the first footnote.

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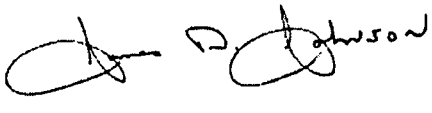
PREPARED BY: David Crotts

APPROVED BY: James D. Johnson



DATE: September 25, 2002

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☐ Committee Substitute for
H.B. 1679 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE INCORPORATION OF THE VILLAGE OF OSSIPEE AND THE SIMULTANEOUS DISSOLUTION OF THE OSSIPEE SANITARY DISTRICT.

☐ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1679
PROPOSED COMMITTEE SUBSTITUTE H1679-PCS8388-LM-30

Short Title: Incorporate Ossipee. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF OSSIPEE.

The General Assembly of North Carolina enacts:

SECTION 1. In accordance with G.S. 130A-81(l), the Town of Ossipee is incorporated and the Ossipee Sanitary District is simultaneously dissolved.

SECTION 2. A Charter for the Town of Ossipee is enacted to read:

"CHARTER FOR THE TOWN OF OSSIPEE.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Ossipee are a body corporate and politic under the name "Town of Ossipee". The Town of Ossipee has all the powers, duties, rights, privileges, and immunities conferred and imposed on the cities by the general law of North Carolina.

"ARTICLE II. CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Ossipee shall be as follows:

A certain tract or parcel of land in Boone Station Township, Alamance County, North Carolina, and described as follows:

BEGINNING at a point in the center line of Shepherd Road (SR No. 1554) and being the southwest corner of Lot No. 8 of Tax Map 3, Block 50, running thence in a northerly direction along the western line of said Lot No. 8 approximately 2230 feet to a point in the center of Reedy Fork Creek; running thence along the center line of Reedy Fork in an easterly direction as it meanders approximately 2700 feet to a point in the center of the new location of Old N. C. Highway No. 87; thence continuing along the centerline of Reedy Fork Creek in a southeasterly direction as it meanders approximately 1450 feet to a point in the east right of way line of N.C. Highway No. 87; running thence along the east, right of way line of N.C. Highway No. 87 in a southerly direction 1190 feet to a point and corner with Lot No. 8A of Tax Map 3, Block 52; running thence with

the north line of Lot No. 8A in a northeasterly direction 210 feet to a point corner with Lot No. 8A; running thence with the east line of Lot Nos. 8A and 8 in a southerly direction 396 feet to a point corner with Lot No. 8 and in the line of Lot No. 10 of Tax Map 3, Block 52; running thence along the line of Lot No. 10 in a northeasterly direction 272.79 feet to a point corner with Lot No. 10; thence along the east line of Lot Nos. 10 and 12 in a southerly direction 664.58 to a point and corner between Lot Nos. 12 and 13 of Tax Map 3, Block 52; running thence along the east line of Lot No. 13 in a southeast direction 384 feet to a point corner with Lot No. 13 and in the line of Lot No. 16B of Tax Map 3, Block 52; running thence along the line between Lot Nos. 13 and 16B in a southwesterly direction 84 feet to a point in the line Lot No. 13 and corner between Lot Nos. 16A and 16B; running thence along the western line of Lot No. 16B and the eastern line of Lot Nos. 16A, 44, 45, 46 and 16 in a southeasterly direction approximately 641 feet to a point and corner between Lot Nos. 16 and 15; running thence along the line between Lot Nos. 15 and 16B in a southeast direction 100 feet to a point corner between Lot Nos. 15 and 16B and in the line of Lot No. 16C of Tax Map 3, Block 52 and also being Lot No. 1 of the "Mattie Ireland Heirs Property," a plat of which is recorded in Plat Book 42, at page 74 in the Alamance County Register of Deeds office; running thence along the southern line Lot No. 15 in a southwesterly direction to a point in the northeastern right-of-way line N.C. Highway No. 87; running thence along the northeastern right-of-way line of N.C. Highway No. 87 in a southeastern direction to a point and corner between Lot Nos. 17 and 18E of Tax Map 3, Block 52; running thence along the line between Lot Nos. 17 and 18E to a point where the line intersects Lot No. 32 of Tax Map 3, Block 52A; running thence along the line between Lot Nos. 18E and 32 in a southwesterly direction to a point in the northeasterly right-of-way line of N.C. No. 87 and corner between Lot No. 18E of Tax Map 3, Block 52A and Lot No. 32 of Tax Map 3, Block 52A; thence crossing N.C. Highway No. 87 in a southwesterly direction to a point in the southwestern right-of-way line of N.C. Highway No. 87 and corner between Lot Nos. 18 and 37 of Tax Map 3, Block 52; running thence along the line between Lot Nos. 18 and 37 in a southwesterly direction to a point and corner between Lot Nos. 18, 18F and 37; running thence along the line between Lot Nos. 18 and 18F to a point where the line corners in the line of Lot No. 18A of Tax Map 3, Block 52; running thence along the line between Lot Nos. 18A and 18F in a southwesterly direction to a point and corner between Lot Nos. 18A and 18F and in the line of Lot No. 41; running thence along the line between Lot Nos. 18F and 41 in a southerly direction to a point in the line of 18F and corner between Lot Nos. 41 and 2; running thence along the southern line of Lot No. 41 in a westerly direction approximately 730 feet to a point in the centerline of Elon-Ossipee Road; running thence along the centerline of Elon-Ossipee Road in a northwesterly direction approximately 630 feet to a point corner with Lot No. 34 of Tax Map 3 Block 52; running thence along the south line of Lot No. 34 in a westerly direction 1268.82 feet to a point in the line of Lot No. 1A of Tax Map 3, Block 50; running thence along the western line of Lot Nos. 34 and 5E, of Tax Map 3, Block 52 in a northerly direction approximately 850 feet to a point and corner with Lot No. 1A of Tax Map 3, Block 50; running thence along the northern line of Lot No 1A in a westerly direction

approximately 1204 feet to a point in the centerline of Gibsonville-Ossipee Road; running thence along the centerline of Gibsonville-Ossipee Road in a northeasterly direction approximately 1,300 feet to a point at the intersection of Gibsonville-Ossipee Road and Shepherd Road; running thence along the centerline of Shepherd Road in a westerly direction approximately 650 feet to the POINT OF BEGINNING and containing 362.10 acres, more or less.

"ARTICLE III. GOVERNING BODY.

"Section 3.1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Ossipee shall be the Town Council which shall have five members.

"Section 3.2. **Manner of Electing Council.** The qualified voters of the entire Town shall elect the members of the Town Council, and, except as provided in this section, they shall serve four-year terms. In 2003, the three candidates receiving the highest number of votes shall be elected to four-year terms, and the two candidates receiving the next highest number of votes shall be elected to two-year terms. In 2005, and quadrennially thereafter, two members shall be elected to four-year terms. In 2007, and quadrennially thereafter, three members shall be elected to four-year terms.

"Section 3.3. **Manner of Electing Mayor; Term of Office.** The Mayor shall be appointed by the Town Council from among its own membership for a two-year term. The Mayor shall have the right to vote on all questions that come through the Council. The Mayor shall have no right to break a tie vote in which the Mayor participated.

"Section 3.4. **Residence of Members of Governing Body.** All members of the governing body, whether elected or appointed, shall be registered voters who reside within the corporate limits of the Town of Ossipee in order to qualify to take, hold, and continue in office.

"Section 3.5. **Filling of Vacancies.** Vacancies occurring for any reason on the Town Council shall be filled by appointment by the remaining members of the Council for the remainder of the unexpired term.

"ARTICLE IV. ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** The Town Council shall be elected on a nonpartisan basis and the results determined by a plurality of votes cast, as provided in G.S. 163-292. The first municipal election shall be in 2003. Elections shall be conducted by the Alamance County Board of Elections unless otherwise provided in accordance with G.S. 163-285.

"ARTICLE V. ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Ossipee will operate under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes. The Mayor shall have the same voting rights and privileges and shall be subject to the same voting limitations and requirements as are Council members under the general law.

"Section 5.2. **The Incorporation of the Town of Ossipee and Simultaneous Dissolution of the Ossipee Sanitary District.** The incorporation of the Town of Ossipee and simultaneous dissolution of the Ossipee Sanitary District shall become effective on the second Monday of the month following the day results of the 2002

election are certified. The Ossipee Sanitary District shall take all actions necessary to effect the transfer of the assets and liabilities of the Sanitary District to the Town of Ossipee."

SECTION 3. The organizational meeting of the Town Council of the Town of Ossipee shall be held at 7:00 P.M. on the second Monday of the month following the day results of the 2002 election are certified. The transitional provisions of G.S. 130A-81(5)a. through g. shall apply to the Town of Ossipee and the Ossipee Sanitary District. The members of the Board of the Ossipee Sanitary District shall be the members of the Town Council until the organizational meeting following the 2003 municipal election when all their terms shall expire. They shall elect one of their members to be Mayor until the organizational meeting following the 2003 municipal election.

SECTION 4. From and after the effective date of this act, the citizens and property in the Town of Ossipee shall be subject to municipal taxes levied for the fiscal year beginning July 1, 2003, and for that purpose the Town shall obtain from Alamance County a record of property in the area herein incorporated that is listed for taxes as of January 1, 2003. The Town may adopt a budget ordinance for fiscal year 2002-2003 without following the timetable in the Local Governmental Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. This act does not affect the property tax levy for the 2002-2003 fiscal year for the Ossipee Sanitary District.

SECTION 5. The Alamance County Board of Elections shall conduct an election on the date of the general election in 2002 for the purpose of submission to the qualified voters in the area described in Section 2.1 of the Charter of the Town of Ossipee the question of whether or not the area shall be incorporated as the Town of Ossipee. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The Alamance County Board of Elections may adopt a modified public notice schedule for the election under this act due to the late date of enactment of this act.

SECTION 6. In the election, the question on the ballot shall be:

"[ ] FOR [ ] AGAINST
Incorporation of the Town of Ossipee".

SECTION 7. In the election, if a majority of the votes are cast "For Incorporation of the Town of Ossipee", Sections 1 through 4 of this act shall become effective on the date that the Alamance County Board of Elections certifies the results of the election. Otherwise, Sections 1 through 4 of this act shall have no force and effect.

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

1. Sales Tax Revenue Change:

Alamance County distributes sales tax revenues on a per capita basis. This analysis uses 2000-01 actual sales tax distribution to show how that distribution would have changed had Ossipee been incorporated at that time.

Current

County	Municipalities	Population	% Population	Sales Tax Distribution
Alamance		124042	61.8%	16,617,279
	Alamance	306	0.2%	40,992
	Burlington	43438	21.6%	5,819,169
	Elon	6397	3.2%	856,974
	Gibsonville	2133	1.1%	285,748
	Graham	12286	6.1%	1,645,894
	Green Level	1848	0.9%	247,567
	Haw River	2256	1.1%	302,226
	Mebane	7373	3.7%	987,724
	Swepsonville	782	0.4%	104,760
TOTAL		200861	100%	26,908,334

With Incorporation

County		Population	% Population	Sales Tax Distribution	Change
Alamance		124042	61.5%	16,561,049	(56,230)
	Alamance	306	0.2%	40,855	(138)
	Burlington	43438	21.6%	5,799,478	(19,691)
	Elon	6397	3.2%	854,074	(2,900)
	Gibsonville	2133	1.1%	284,780	(967)
	Graham	12286	6.1%	1,640,324	(5,570)
	Green Level	1848	0.9%	246,729	(838)
	Haw River	2256	1.1%	301,202	(1,024)
	Mebane	7373	3.7%	984,381	(3,343)
	Swepsonville	782	0.4%	104,406	(353)
	Ossipee	682	0.3%	91,055	91,055

TOTAL		201543			

Note: The population estimate for the Town of Ossipp is provided by those requesting incorporation. These are not official estimates from the Department of Commerce.

2. Powell Bill Allocation Change

Annually state street aid or Powell Bill allocations are made to incorporated municipalities which establish their eligibility and qualify as provided by G.S. 136-41.1-.3. The amount allocated to each municipality is based on both population and qualifying street miles within the municipality.

FY 2001-02 population based allocations assumed a total, statewide municipal population of 4,086,685 and available funds of $101,578,822.46. This created a per capita distribution rate of $ 24.86.

Adding the new population of Ossipee (682) to the statewide total creates a new population of 4,087,367 and a per capita allocation of $24.852. The impact of this change on Alamance municipalities is as follows:

Municipalities	Population	Current Allocation	Prospective Allocation	Change
Alamance	311	7,730.23	7,728.97	(1.26)
Burlington	45158	1,122,449.24	1,122,266.62	(182.62)
Elon	6762	168,076.57	168,049.22	(27.35)
Gibsonville	4393	109,192.60	109,174.84	(17.77)
Graham	12894	320,493.83	320,441.69	(52.14)
Green Level	2051	50,979.75	50,971.45	(8.29)
Haw River	1918	47,673.89	47,666.14	(7.76)
Mebane	7318	181,896.53	181,866.94	(29.59)
Swepsonville*			-	-
Ossipee	682	-	16,949.06	16,949.06

3. Utility Excise Tax:

Of the 3.22% state excise tax rate on the in-state gross receipts of gas, power and light and telephone companies, 3.09 percentage points (or 96% of collections) are distributed

to the respective municipalities within which these services took place. In 1998-99 the statewide total was $161.1 million.

Because Ossipee only incorporates new areas (areas not currently a part of another municipalities) no revenue shift is expected. Any revenue received by Ossipee from this tax would be new or drawn from the NC General Fund.

4. Reimbursements:

Since 1979 the General Assembly has made several changes to tax law that impact local governments. The state's cities and counties have received reimbursements from the state for some of these losses, particularly as they relate to the sales and property tax bases. The state reimburses local governments for property tax losses related to the repeal of taxes on inventories and intangibles, as well as some of the losses associated with the homestead exemption. Locals also receive a reimbursement for sales taxes that are no longer paid on items purchased with food stamps. These reimbursements total to $333.4 million annually. Normally, when a new town incorporates some existing municipalities may see a small decline in their distributions, with a tiny amount redistributed to the new town. However, because the reimbursements sunset June 30, 2003, the Town of Ossipee will not qualify for these funds.

Note: Population numbers used for sales tax and Powell bill allocation vary due to the year used by the controling agency.

Prepared by Linda Struyk Millsaps, Fiscal Research Division.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Allen, Buchanan, Luebke, Wainwright** (Chair/Chairs) for the Committee on **Finance**.

☒ Committee Substitute for
S.B. 832 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL AGENCIES.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☐ With a favorable report as to 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 832

Finance Committee Substitute Adopted 12/5/01
Third Edition Engrossed 12/6/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S832-PCS4782-LAf-92

Short Title: Small Business Contractor Initiative/Funds. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 18. Small Business Contractor Act.

"**§ 143B-472.75. Purpose and intent.**

The purpose and intent of this Part is to foster economic development and the creation of jobs by providing financial assistance to financially responsible small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts.

"**§ 143B-472.76. Definitions.**

The following definitions apply in this Part:

(1) Authority. – The North Carolina Small Business Contractor Authority created in this Part.

(2) Internal Revenue Code. – The Code as defined in G.S. 105-228.90.

(3) Contract term. – The term of a contract, including the maintenance or warranty period required by the contract and the period during which the surety may be liable for latent defects.

(4) Government agency. – The federal government, the State, an agency, or a political subdivision of the federal government or the State, or a utility regulated by the North Carolina Utilities Commission.

(5) Related party. – A party related to the applicant in a manner that would require an attribution of stock to or from the party under section 318 of the Internal Revenue Code.

(6) Secretary. – The Secretary of Commerce.

"**§ 143B-472.77. Authority creation; powers.**

(a) Creation. – The North Carolina Small Business Contractor Authority is created within the Department of Commerce.

(b) Membership. – The Authority consists of 11 members appointed as follows:

(1) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom has experience in underwriting surety bonds.

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom is a present or former governmental employee with experience in administering public contracts.

(3) Three members appointed by the Governor, one of whom is a licensed general contractor and one of whom is experienced in working for private, nonprofit, small, or underutilized businesses.

(c) Terms. – Members serve four-year terms, except initial appointments. There is no prohibition against reappointment for subsequent terms. Initial appointments shall begin on January 1, 2003. Each appointing authority shall designate two of its initial appointments to serve four-year terms and the remainder of its initial appointments to serve three-year terms.

(d) Chair. – The chair shall be elected annually by the members of the Authority from the membership of the Authority and shall be a voting member.

(e) Compensation. – The Authority members shall receive no salary as a result of serving on the Authority but are entitled to per diem and allowances in accordance with G.S. 138-5.

(f) Meetings. – The Secretary shall convene the first meeting of the Authority within 60 days after January 1, 2003. Meetings shall be held as necessary as determined by the Authority.

(g) Quorum. – A majority of the members of the Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Authority.

(h) Vacancies. – A vacancy on the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made, for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(i) Removal. – Members may be removed in accordance with G.S. 143B-13. A member who misses three consecutive meetings of the Authority may be removed for nonfeasance.

(j) Powers and Duties. – The Authority has the following powers and duties:

(1) To accept grants, loans, contributions, and services.

(2) To employ staff, procure supplies, services, and property, and enter into contracts, leases, or other legal agreements, including the procurement of reinsurance, to carry out the purposes of the Authority.

(3) To acquire, manage, operate, dispose of, or otherwise deal with property, take assignments of rentals and leases, and enter into contracts, leases, agreements, and arrangements that are necessary or incidental to the performance of the duties of the Authority, upon terms and conditions that it considers appropriate.

(4) To specify the form and content of applications, guaranty agreements, or agreements necessary to fulfill the purposes of this Part.

(5) To acquire or take assignments of documents executed, obtained, or delivered in connection with assistance provided by the Authority under this Part.

(6) To fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses in connection with any assistance provided by the Authority under this Part.

(7) To adopt rules, in accordance with Chapter 150B of the General Statutes, to implement this Part.

(8) To take any other action necessary to carry out its purposes.

(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds.

(k) Limitations. – Notwithstanding any other provision of this Part, the Authority may not provide financial assistance that constitutes raising money on the credit of the State or pledging the faith and credit or the taxing power of the State directly or indirectly for the payment of any debt. Before providing financial assistance to an applicant under this Part, the Authority must obtain the written certification of the Attorney General that the proposed financial assistance does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the North Carolina Constitution.

"**§ 143B-472.78. Eligibility.**

To qualify for assistance under this Part, an applicant must meet all of the following requirements:

(1) The applicant must be a small business concern that meets the applicable size standards established by the United States Small Business Administration for business loans based on the industry in which the concern, including its affiliates, is primarily engaged and based on the industry in which the concern, not including its affiliates, is primarily engaged. In addition, in the case of an application for bonding assistance, the applicant, including its affiliates, may not have receipts for construction and service contracts in excess of the maximum amount established by the United States Small Business Administration for surety bond guarantee assistance.

(2) The applicant must be an individual, or be controlled by one or more individuals, with a reputation for financial responsibility, as determined from creditors, employers, and other individuals with personal knowledge. If the applicant is other than a sole proprietorship, at least seventy percent (70%) of the business must be owned by individuals with a reputation for financial responsibility.

(3) The applicant must be a resident of this State or be incorporated in this State and must have its principal place of business in this State.

(4) The applicant must demonstrate to the satisfaction of the Authority that it has been unable to obtain adequate financing or bonding on reasonable terms through an authorized company. If the applicant is applying for a guarantee of a loan, the applicant must have applied for and been denied a loan by a financial institution.

"**§ 143B-472.79. Small Business Contract Financing Fund.**

(a) Creation and Use. – The Small Business Contract Financing Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund to make direct loans and guaranty payments required by defaults and to pay the portion of the administrative expenses of the Authority related to making these loans and payments.

(b) Content. – The Small Business Contract Financing Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Repayments of principal of and interest on direct loans.

(3) Premiums, fees, and any other amounts received by the Authority with respect to financial assistance provided by the Authority.

(4) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.

(5) Investment income of the Fund.

(6) Any other moneys made available to the Fund.

(c) Emergency Funds. – If the Authority and the Secretary determine that the Small Business Contract Financing Fund does not have adequate funds, the Authority may request funding from the Contingency and Emergency Fund.

"**§ 143B-472.80. Contract performance assistance authorized.**

(a) Type. – The Authority is authorized to provide the following contract performance assistance:

(1) A guarantee of a loan made to the applicant.

(2) If the applicant demonstrates to the satisfaction of the Authority that it is unable to obtain money from any other source, a loan to the applicant.

(b) Qualification. – The Authority shall not lend money to an applicant or guarantee a loan unless all of the following requirements are met:

(1) The applicant meets the requirements of G.S. 143B-472.78.

(2) The loan is to be used to perform an identified contract, of which the majority of funding is provided by a government agency or a combination of government agencies.

(3) The loan is to be used for working capital or equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan or guaranty.

(c) Terms and Conditions. – The Authority shall set the terms and conditions for loans and for the guarantee of loans. When the Authority lends money from the Small Business Contract Financing Fund, it shall prepare loan documents that include all of the following:

(1) The rate of interest on the loan, which shall not exceed any applicable statutory limit for a loan of the same type.

(2) A payment schedule that provides money to the applicant in the amounts and at the times that the applicant needs the money to perform the contract for which the loan is made.

(3) A requirement that, before each advance of money is released to the applicant, the applicant and the Authority must co-sign the request for the money.

(4) Provisions for repayment of the loan.

(5) Any other provision the Authority considers necessary to secure the loan, including an assignment of, or a lien on, payment under the contract, if allowable.

(d) Maturity. – A loan made by the Authority shall mature not later than the date the applicant is to receive full payment under the identified contract, unless the Authority determines that a later maturity date is required to fulfill the purposes of this Part.

(e) Diversity. – In selecting applicants for assistance, the Authority must consider the need to serve all geographic and political areas and subdivisions of the State.

(f) Limitation. – The total amount of loan guarantees and loans issued to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

"**§ 143B-472.81. Small Business Surety Bond Fund.**

(a) Creation and Use. – The Small Business Surety Bond Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year, and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund for the purposes of and to pay the expenses of the Authority related to providing bonding assistance.

(b) Content. – The Small Business Surety Bond Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Premiums, fees, and any other amounts received by the Authority with respect to bonding assistance provided by the Authority.

(3) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.
(4) Investment income of the Fund.
(5) Any other moneys made available to the Fund.

"**§ 143B-472.82. Bonding assistance authorized.**

(a) Guaranty. – Subject to the restrictions of this Part, the Authority, on application, may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency or a combination of government agencies, up to ninety percent (90%) of the surety's losses, or nine hundred thousand dollars ($900,000), whichever is less. The term of a guaranty under this section shall not exceed the contract term. The Authority may vary the terms and conditions of the guaranty from surety to surety, based on the Authority's history of experience with the surety and other factors that the Authority considers relevant.

(b) Notice. – When the Authority provides a guaranty under this section with respect to a contract, it must give the government agencies that are parties to the contract written notice of the guaranty.

(c) Bonds. – The Authority may execute and perform bid bonds, performance bonds, and payment bonds as a surety for the benefit of an applicant in connection with a contract, of which the majority of the funding is provided by a government agency or a combination of government agencies.

(d) Obligation of State. – The total amount of guarantees issued and bonds executed shall not exceed ninety percent (90%) of the amount of money in the Small Business Surety Bond Fund. The Authority shall not pledge any money other than money in the Fund for payment of a loss or bond. No action by the Authority constitutes the creation of a debt secured by a pledge of the taxing power or the faith and credit of the State or any of its political subdivisions. The face of each guarantee issued or bond executed shall contain a statement that the Authority is obligated to pay the guarantee or bond only from the revenue in the Small Business Surety Bond Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee or bond. Nothing in this subsection limits the ability of the Authority to obtain reinsurance.

(e) Limitation. – The total amount of bonding assistance provided to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

(f) Payment. – If the Authority considers it prudent, it may require that payment be made either to the contractor and lending institution or to the bonding authority.

"**§ 143B-472.83. Bonding assistance conditions.**

(a) Requirements. – To obtain bonding assistance under this Part, an applicant must meet the eligibility requirements of G.S. 143B-472.78 and must demonstrate to the satisfaction of the Authority that all of the following apply:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor.

(2) A bond is not obtainable on reasonable terms and conditions without assistance under this Part.

(3) The applicant will not subcontract more than seventy-five percent (75%) of the face value of the contract.

(b) Default. – If an applicant or a person that is a related party with respect to the applicant has ever defaulted on a bond or guaranty provided by the Authority, the Authority may approve a guaranty or bond under this Part only if one of the following applies:

(1) Five years have elapsed since the time of the default.

(2) Every default by the applicant or related party in any program administered by the Authority has been cured.

(c) Economic Effect. – Before issuing a guaranty or bond, the Authority must determine that the contract for which a bond is sought to be guaranteed or issued has a substantial economic effect. To determine the economic effect of a contract, the Authority must consider all of the following:

(1) The amount of the guaranty obligation.

(2) The terms of the bond to be guaranteed.

(3) The number of new jobs that will be created by the contract to be bonded.

(4) Any other factor that the Authority considers relevant.

"**§ 143B-472.84. Surety bonding line.**

The Authority may, on application, establish a surety bonding line in order to issue or guarantee multiple bonds to an applicant within preapproved terms, conditions, and limitations.

"**§ 143B-472.85. Application.**

To apply for assistance from the Authority under this Part, an applicant and, where applicable, a surety must submit to the Authority an application on a form prescribed by the Authority. The application must include any information and documentation the Authority considers necessary to enable the Authority to evaluate the application in accordance with this Part. The Authority may require an applicant to provide an audited balance sheet unless the Authority determines that such a requirement is not necessary or appropriate to fulfill the purposes of this Part.

"**§ 143B-472.86. Premiums and fees.**

(a) Amount. – The Authority shall by rule set the premiums and fees to be paid for providing assistance under this Part. The premiums and fees set by the Authority shall be payable in the amounts, at the time, and in the manner that the Authority requires. The premiums and fees may vary in amount among transactions and at different stages during the terms of transactions.

(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority

under this section must be approved by the Commissioner of Insurance before they may be used.

(c) Forms. – The Authority shall develop forms to be used for financing and bonding assistance.

"**§ 143B-472.87. False statements; penalty.**

(a) Documents. – It is unlawful to knowingly make or cause any false statement or report to be made in any application or in any document submitted to the Authority.

(b) Statements. – It is unlawful to make or cause any false statement or report to be made to the Authority for the purpose of influencing the action of the Authority on an application for assistance or affecting assistance, whether or not assistance has been previously extended.

(c) Penalty. – A violation of this section is a Class 2 misdemeanor."

SECTION 2.(a) This act becomes effective January 1, 2003, and applies to offenses committed or causes of action arising on or after that date.

SECTION 2.(b) This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 832

Finance Committee Substitute Adopted 12/5/01
Third Edition Engrossed 12/6/01
PROPOSED HOUSE COMMITTEE SUBSTITUTE S832-CSLAf-92 [v.5]

9/25/2002 2:51:03 PM

Short Title: Small Business Contractor Initiative/Funds. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR CONTRACT FINANCING AND SURETY BONDS FOR SMALL BUSINESSES THAT CONTRACT WITH GOVERNMENTAL AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 18. Small Business Contractor Act.

"**§ 143B-472.75. Purpose and intent.**

The purpose and intent of this Part is to foster economic development and the creation of jobs by providing financial assistance to financially responsible small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts.

"**§ 143B-472.76. Definitions.**

The following definitions apply in this Part:

(1) Authority. – The North Carolina Small Business Contractor Authority created in this Part.

(2) Internal Revenue Code. – The Code as defined in G.S. 105-228.90.

(3) Contract term. – The term of a contract, including the maintenance or warranty period required by the contract and the period during which the surety may be liable for latent defects.

(4) Government agency. – The federal government, the State, an agency, or a political subdivision of the federal government or the State, or a utility regulated by the North Carolina Utilities Commission.

(5) Related party. – A party related to the applicant in a manner that would require an attribution of stock to or from the party under section 318 of the Internal Revenue Code.

(6) Secretary. – The Secretary of Commerce.

"**§ 143B-472.77. Authority creation; powers.**

(a) Creation. – The North Carolina Small Business Contractor Authority is created within the Department of Commerce.

(b) Membership. – The Authority consists of 11 members appointed as follows:

(1) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom has experience in underwriting surety bonds.

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom is a present or former governmental employee with experience in administering public contracts.

(3) Three members appointed by the Governor, one of whom is a licensed general contractor and one of whom is experienced in working for private, nonprofit, small, or underutilized businesses.

(c) Terms. – Members serve four-year terms, except initial appointments. There is no prohibition against reappointment for subsequent terms. Initial appointments shall begin on January 1, 2003. Each appointing authority shall designate two of its initial appointments to serve four-year terms and the remainder of its initial appointments to serve three-year terms.

(d) Chair. – The chair shall be elected annually by the members of the Authority from the membership of the Authority and shall be a voting member.

(e) Compensation. – The Authority members shall receive no salary as a result of serving on the Authority but are entitled to per diem and allowances in accordance with G.S. 138-5.

(f) Meetings. – The Secretary shall convene the first meeting of the Authority within 60 days after January 1, 2003. Meetings shall be held as necessary as determined by the Authority.

(g) Quorum. – A majority of the members of the Authority constitutes a quorum for the transaction of business. A vacancy in the membership of the Authority does not impair the right of the quorum to exercise all rights and to perform all duties of the Authority.

(h) Vacancies. – A vacancy on the Authority resulting from the resignation of a member or otherwise is filled in the same manner in which the original appointment was made, for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(i) Removal. – Members may be removed in accordance with G.S. 143B-13. A member who misses three consecutive meetings of the Authority may be removed for nonfeasance.

(j) Powers and Duties. – The Authority has the following powers and duties:

(1) To accept grants, loans, contributions, and services.

(2) To employ staff, procure supplies, services, and property, and enter into contracts, leases, or other legal agreements, including the procurement of reinsurance, to carry out the purposes of the Authority.

(3) To acquire, manage, operate, dispose of, or otherwise deal with property, take assignments of rentals and leases, and enter into contracts, leases, agreements, and arrangements that are necessary or incidental to the performance of the duties of the Authority, upon terms and conditions that it considers appropriate.

(4) To specify the form and content of applications, guaranty agreements, or agreements necessary to fulfill the purposes of this Part.

(5) To acquire or take assignments of documents executed, obtained, or delivered in connection with assistance provided by the Authority under this Part.

(6) To fix, determine, charge, and collect any premiums, fees, charges, costs, and expenses in connection with any assistance provided by the Authority under this Part.

(7) To adopt rules, in accordance with Chapter 150B of the General Statutes, to implement this Part.

(8) To take any other action necessary to carry out its purposes.

(9) To report quarterly to the Joint Legislative Commission on Governmental Operations on the activities of the Authority, including the amount of rates, sureties, and bonds.

(k) Limitations. – Notwithstanding any other provision of this Part, the Authority may not provide financial assistance that constitutes raising money on the credit of the State or pledging the faith and credit or the taxing power of the State directly or indirectly for the payment of any debt. Before providing financial assistance to an applicant under this Part, the Authority must obtain the written certification of the Attorney General that the proposed financial assistance does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the North Carolina Constitution.

"**§ 143B-472.78. Eligibility.**

To qualify for assistance under this Part, an applicant must meet all of the following requirements:

(1) The applicant must be a small business concern that meets the applicable size standards established by the United States Small Business Administration for business loans based on the industry in which the concern, including its affiliates, is primarily engaged and based on the industry in which the concern, not including its affiliates, is primarily engaged. In addition, in the case of an application for bonding assistance, the applicant, including its affiliates, may not have receipts for construction and service contracts in excess of the maximum amount established by the United States Small Business Administration for surety bond guarantee assistance.

(2) The applicant must be an individual, or be controlled by one or more individuals, with a reputation for financial responsibility, as determined from creditors, employers, and other individuals with personal knowledge. If the applicant is other than a sole proprietorship, at least seventy percent (70%) of the business must be owned by individuals with a reputation for financial responsibility.

(3) The applicant must be a resident of this State or be incorporated in this State and must have its principal place of business in this State.

(4) The applicant must demonstrate to the satisfaction of the Authority that it has been unable to obtain adequate financing or bonding on reasonable terms through an authorized company. If the applicant is applying for a guarantee of a loan, the applicant must have applied for and been denied a loan by a financial institution.

"**§ 143B-472.79. Small Business Contract Financing Fund.**

(a) Creation and Use. – The Small Business Contract Financing Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund to make direct loans and guaranty payments required by defaults and to pay the portion of the administrative expenses of the Authority related to making these loans and payments.

(b) Content. – The Small Business Contract Financing Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Repayments of principal of and interest on direct loans.

(3) Premiums, fees, and any other amounts received by the Authority with respect to financial assistance provided by the Authority.

(4) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.

(5) Investment income of the Fund.

(6) Any other moneys made available to the Fund.

(c) Emergency Funds. – If the Authority and the Secretary determine that the Small Business Contract Financing Fund does not have adequate funds, the Authority may request funding from the Contingency and Emergency Fund.

"**§ 143B-472.80. Contract performance assistance authorized.**

(a) Type. – The Authority is authorized to provide the following contract performance assistance:

(1) A guarantee of a loan made to the applicant.

(2) If the applicant demonstrates to the satisfaction of the Authority that it is unable to obtain money from any other source, a loan to the applicant.

(b) Qualification. – The Authority shall not lend money to an applicant or guarantee a loan unless all of the following requirements are met:

(1) The applicant meets the requirements of G.S. 143B-472.78.

(2) The loan is to be used to perform an identified contract, of which the majority of funding is provided by a government agency or a combination of government agencies.

(3) The loan is to be used for working capital or equipment needed to perform the contract, the cost of which can be repaid from contract proceeds, if the Authority has entered into an agreement with the applicant necessary to secure the loan or guaranty.

(c) Terms and Conditions. – The Authority shall set the terms and conditions for loans and for the guarantee of loans. When the Authority lends money from the Small Business Contract Financing Fund, it shall prepare loan documents that include all of the following:

(1) The rate of interest on the loan, which shall not exceed any applicable statutory limit for a loan of the same type.

(2) A payment schedule that provides money to the applicant in the amounts and at the times that the applicant needs the money to perform the contract for which the loan is made.

(3) A requirement that, before each advance of money is released to the applicant, the applicant and the Authority must co-sign the request for the money.

(4) Provisions for repayment of the loan.

(5) Any other provision the Authority considers necessary to secure the loan, including an assignment of, or a lien on, payment under the contract, if allowable.

(d) Maturity. – A loan made by the Authority shall mature not later than the date the applicant is to receive full payment under the identified contract, unless the Authority determines that a later maturity date is required to fulfill the purposes of this Part.

(e) Diversity. – In selecting applicants for assistance, the Authority must consider the need to serve all geographic and political areas and subdivisions of the State.

(f) Limitation. – The total amount of loan guarantees and loans issued to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

"**§ 143B-472.81. Small Business Surety Bond Fund.**

(a) Creation and Use. – The Small Business Surety Bond Fund is created as a special revenue fund. Revenue in the Fund does not revert at the end of a fiscal year and interest and other investment income earned by the Fund accrues to the Fund. The Authority shall use the Fund for the purposes of and to pay the expenses of the Authority related to providing bonding assistance.

(b) Content. – The Small Business Surety Bond Fund consists of all of the following revenue:

(1) Funds appropriated to the Fund by the State.

(2) Premiums, fees, and any other amounts received by the Authority with respect to bonding assistance provided by the Authority.

(3) Proceeds designated by the Authority from the sale, lease, or other disposition of property or contracts held or acquired by the Authority.
(4) Investment income of the Fund.
(5) Any other moneys made available to the Fund.

"**§ 143B-472.82. Bonding assistance authorized.**

(a) Guaranty. – Subject to the restrictions of this Part, the Authority, on application, may guarantee a surety for losses incurred under a bid bond, payment bond, or performance bond on an applicant's contract, of which the majority of the funding is provided by a government agency or a combination of government agencies, up to ninety percent (90%) of the surety's losses, or nine hundred thousand dollars ($900,000), whichever is less. The term of a guaranty under this section shall not exceed the contract term. The Authority may vary the terms and conditions of the guaranty from surety to surety, based on the Authority's history of experience with the surety and other factors that the Authority considers relevant.

(b) Notice. – When the Authority provides a guaranty under this section with respect to a contract, it must give the government agencies that are parties to the contract written notice of the guaranty.

(c) Bonds. – The Authority may execute and perform bid bonds, performance bonds, and payment bonds as a surety for the benefit of an applicant in connection with a contract, of which the majority of the funding is provided by a government agency or a combination of government agencies.

(d) Obligation of State. – The total amount of guarantees issued and bonds executed shall not exceed ninety percent (90%) of the amount of money in the Small Business Surety Bond Fund. The Authority shall not pledge any money other than money in the Fund for payment of a loss or bond. No action by the Authority constitutes the creation of a debt secured by a pledge of the taxing power or the faith and credit of the State or any of its political subdivisions. The face of each guarantee issued or bond executed shall contain a statement that the Authority is obligated to pay the guarantee or bond only from the revenue in the Small Business Surety Bond Fund and that neither the taxing power nor the faith and credit of the State or any of its political subdivisions is pledged in payment of the guarantee or bond. Nothing in this subsection limits the ability of the Authority to obtain reinsurance.

(e) Limitation. – The total amount of bonding assistance provided to each recipient during a fiscal year shall not exceed fifteen percent (15%) of the amount of money in the Fund as of the beginning of that fiscal year.

(f) Payment. – If the Authority considers it prudent, it may require that payment be made either to the contractor and lending institution or the bonding authority.

"**§ 143B-472.83. Bonding assistance conditions.**

(a) Requirements. – To obtain bonding assistance under this Part, an applicant must meet the eligibility requirements of G.S. 143B-472.78 and must demonstrate to the satisfaction of the Authority that all of the following apply:

(1) A bond is required in order to bid on a contract or to serve as a prime contractor or subcontractor.

(2) A bond is not obtainable on reasonable terms and conditions without assistance under this Part.

(3) The applicant will not subcontract more than seventy-five percent (75%) of the face value of the contract.

(b) Default. – If an applicant or a person that is a related party with respect to the applicant has ever defaulted on a bond or guaranty provided by the Authority, the Authority may approve a guaranty or bond under this Part only if one of the following applies:

(1) Five years have elapsed since the time of the default.

(2) Every default by the applicant or related party in any program administered by the Authority has been cured.

(c) Economic Effect. – Before issuing a guaranty or bond, the Authority must determine that the contract for which a bond is sought to be guaranteed or issued has a substantial economic effect. To determine the economic effect of a contract, the Authority must consider all of the following:

(1) The amount of the guaranty obligation.

(2) The terms of the bond to be guaranteed.

(3) The number of new jobs that will be created by the contract to be bonded.

(4) Any other factor that the Authority considers relevant.

"**§ 143B-472.84. Surety bonding line.**

The Authority may, on application, establish a surety bonding line in order to issue or guarantee multiple bonds to an applicant within preapproved terms, conditions, and limitations.

"**§ 143B-472.85. Application.**

To apply for assistance from the Authority under this Part, an applicant and, where applicable, a surety, must submit to the Authority an application on a form prescribed by the Authority. The application must include any information and documentation the Authority considers necessary to enable the Authority to evaluate the application in accordance with this Part. The Authority may require an applicant to provide an audited balance sheet unless the Authority determines that such a requirement is not necessary or appropriate to fulfill the purposes of this Part.

"**§ 143B-472.86. Premiums and fees.**

(a) Amount. – The Authority shall by rule set the premiums and fees to be paid for providing assistance under this Part. The premiums and fees set by the Authority shall be payable in the amounts, at the time, and in the manner that the Authority requires. The premiums and fees may vary in amount among transactions and at different stages during the terms of transactions.

(b) Rate Standards. – The rate standards in G.S. 58-40-20 apply to premiums set by the Authority under this section. The Authority may also use the forms and rates of rating or advisory organizations licensed under G.S. 58-40-50 or G.S. 58-40-55. The Authority may vary from these rates in order to broaden participation by small businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The premiums set and forms developed by the Authority

under this section must be approved by the Commissioner of Insurance before they may be used.

(c) Forms. – The Authority shall develop forms to be used for financing and bonding assistance.

"**§ 143B-472.87. False statements; penalty.**

(a) Documents. – It is unlawful to knowingly make or cause any false statement or report to be made in any application or in any document submitted to the Authority.

(b) Statements. – It is unlawful to make or cause any false statement or report to be made to the Authority for the purpose of influencing the action of the Authority on an application for assistance or affecting assistance, whether or not assistance has been previously extended.

(c) Penalty. – A violation of this section is a Class 2 misdemeanor."

SECTION 2.(a) This act becomes effective January 1, 2003, and applies to offenses committed or causes of action arising on or after that date.

SECTION 2.(b) This act expires June 30, 2006. The expiration of this act does not affect prosecutions for offenses committed before that date, and the statutes that would be applicable but for this act remain applicable to those prosecutions. The expiration of this act does not affect any guarantees or bonds executed prior to the expiration.

SENATE BILL 832:
Small Business Contractor Initiative/Funds

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Sen. Rand
Date:	September 24, 2002	**Analysis by:**	Martha Walston*
Version:	PCS to Third Edition		Committee Counsel

SUMMARY: Senate Bill 832 would create the N.C. Small Business Contractor Authority in the Department of Commerce to provide loan guarantees, loans, and surety bonds for financially responsible small North Carolina businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The Authority would be governed by 11 members and would administer two nonreverting special revenue funds (the Small Business Contract Financing Fund and the Small Business Surety Bond Fund.

The proposed committee substitute makes the following changes:

- *Requires that the Attorney General certify that proposed financial assistance to be provided by the Authority does not constitute raising money on the credit of the State or pledging the faith of the State directly or indirectly for the payment of any debt as provided in Section 3(2) of Article V of the NC Constitution.[1] The earlier version required that certification be made by the State Treasurer and cited an incorrect section of the Constitution. (This change would exempt the bill from roll call under the Constitution. However the bill is still roll call under House Rules because it provides for payment of fees.)*
- *Changes the effective date from January 1, 2002 to January 1, 2003 and the sunset from June 30, 2005 to June 30, 2006.*
- *Makes other technical drafting changes suggested by the State Treasurer's bond attorney.*

BILL ANALYSIS: Senate Bill 832 would create the N.C. Small Business Contractor Authority in the Department of Commerce to provide loan guarantees, loans, and surety bonds for financially responsible small North Carolina businesses that are unable to obtain adequate financing and bonding assistance in connection with contracts. The PCS would become effective January 1, 2003. The Authority would administer two nonreverting special revenue funds.

- Small Business Contract Financing Fund – From this Fund, the Authority would provide loans and loan guarantees to small businesses to be used to perform government contracts.

[1] Section 3(2) of Article V provides: "The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon."

*Staff Attorney, Martha Harris, contributed substantially to this summary.

- Small Business Surety Bond Fund - From this Fund, the Authority would guarantee sureties for losses incurred under a bid bond, payment bond, or performance bond on an applicant's government contract, and would execute and perform bid bonds, performance bonds, and payment bonds itself as surety for the benefit of the applicant in connection with a government contract. The Authority may provide assistance from the Surety Bond Fund only if the contract for which assistance is sought has a substantial economic effect.

The bill does not capitalize these Funds but states that they will consist of State appropriations, loan repayments, fee receipts, proceeds from the disposition of property held by the Authority, investment income, and other funds.

Financial assistance provided to a single recipient within a fiscal year from either fund may not exceed 15% of the total in that fund as of the beginning of that fiscal year. The total amount of guarantees and bonds provided from the Surety Bond Fund may not exceed 90% of the amount of money in that fund.

The federal Small Business Administration's standard is used to determine if a business is a small business. To be eligible for financial assistance, a small business must have a reputation for financial responsibility and must demonstrate that it has been unable to obtain adequate financing or bonding on reasonable terms. Businesses that receive financial assistance must pay premiums and fees established by the Authority.

The Authority shall set, by rule, the premiums and fees to be paid for providing finance assistance.

An applicant is guilty of a Class 2 misdemeanor if the applicant knowingly makes or causes to be made any false statement or report to the Authority.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: September 25, 2002

TO: House Finance Committee

FROM: Richard Bostic & Adam Levinson
Fiscal Research Division

RE: SB 832 PCS – Small Business Contractor Initiative/Funds

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
Small Business Contract Financing Fund	See ASSUMPTIONS AND METHODOLOGY				
Small Business Surety Bond Fund	See ASSUMPTIONS AND METHODOLOGY				
EXPENDITURES					
General Fund Dept. of Commerce	See ASSUMPTIONS AND METHODOLOGY				
County Governments	Minimal impact				
POSITIONS:					
Small Business Contractor Authority	See ASSUMPTIONS AND METHODOLOGY				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Commerce; Small Business Contractor Authority

EFFECTIVE DATE: The act becomes effective January 1, 2002 and applies to offenses committed

or causes of action arising on or after that date. The act expires June 30, 2001.

BILL SUMMARY

The bill creates an 11-member North Carolina Small Business Contractor Authority in the Department of Commerce to provide loan guarantees, loans, and surety bonds to small businesses. Assistance will be provided through the Small Business Contract Financing Fund and the Small Business Surety Bond Fund.

ASSUMPTIONS AND METHODOLOGY

SPECIAL FUNDS

The Small Business Contract Financing Fund and the Small Business Surety Bond Fund are not funded in the bill. No General Fund appropriation was made to the two funds in SB 1115, Modify Appropriations Act of 2001. However, the bill allows the newly created Small Business Contractor Authority to request a portion of the Contingency and Emergency Fund money for the Small Business Contract Financing Fund. The Contingency and Emergency Fund has a $5 million General Fund appropriation in FY 2002-03 and no expenditures have been made from this fund this fiscal year. The two Small Business Funds can accept "any other moneys made available to the fund," but no sources have yet been identified.

Once the Funds are capitalized, the Authority can charge Fund applicants fees for services. Since the bill is permissive on charging fees and the Fund amounts are unknown, no estimate can be made on the revenue generated by these Funds.

AUTHORITY

The bill requires the Small Business Contractor Authority to meet within 60 days of the January 1, 2003 effective date. Authority members are allowed per diem expenses, but no money is appropriated for this cost in the FY 2002-03 budget. This fiscal note assumes that the Department of Commerce will use its General Fund budget to absorb the estimated $1,200 per meeting per diem costs. It is assumed that the Department will also expend General Fund dollars for meeting expenses such as meeting notices and will provide the staff time needed to establish and administer the Authority. At this time, the Department of Commerce has no information on how much the program will cost.

MISDEMEANOR

The Class 2 misdemeanor in the bill is a community sentence offense punishable by up to 60 days in the county jail. The jail costs of $40 a day would be paid by the county. No estimate can be made on how many offenses might occur.

TECHNICAL CONSIDERATIONS:

MINUTES
HOUSE COMMITTEE ON FINANCE

September 30, 2002

The House Committee on Finance met on Monday, September 30, 2002, at 8:30 P.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen and Monroe Buchanan, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Martha Alexander, John Blust, Philip Baddour, Russell Capps, Leslie Cox, Pete Cunningham, Michael Decker, Beverly Earle, Rick Eddins, Zeno Edwards, Pryor Gibson, Lyons Gray, Joe Hackney, Hugh Holliman, Bill Hurley, Linda Johnson, Daniel McComas, Eugene McCombs, Edwin McMahan, Mia Morris, John Rayfield, Jennifer Weiss, Shelly Willingham, Connie Wilson and Larry Womble. Rita Harris, Appropriations Clerk, clerked the committee.

HOUSE BILL 1753, A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE BILL LEE ACT TAX CREDITS FOR INVESTING IN MACHINERY AND EQUIPMENT AND FOR JOB CREATION, was before the committee for a second time today. The first meeting to hear this bill was from 3:30 P.M. until 6:45 P.M., at which time the meeting was adjourned for members to attend the 7:00 P.M. House session.

Chairman Luebke commenced the meeting by explaining that what the committee had before it now were changes to the bill that were taken as straw votes during the afternoon session; the bill was before the committee with the successful straw votes having been removed from the bill.

Rep. Bill Owens, bill sponsor, said the committee substitute needed to be passed tonight in order for Appropriations to hear it the following morning and he respectfully requested the committee to pass the committee substitute.

Rep. Buchanan stated that the bill was a big package at a late hour, that it would take money from the budget and that it would probably preclude removal of the ½ cent sales tax in July 2003; thus, he moved for an unfavorable report. Chairman Luebke declined the motion, but accepted a motion from Rep. Gibson to place the committee substitute before the committee for discussion.

Rep. Jarrell asked how much money remained in the bill. Staff explained that it was primarily the corporate rate change and the bonds that had major impacts. The debt service figures were read from the fiscal note.

Rep. Wilson urged a vote against the bill because it contained continuing expenditures. She felt the bill had merit, but that it needed to be studied, rather than given a favorable report. Rep. Holliman concurred with Rep. Wilson's plea to vote against the bill.

Rep. Blust spoke against voting for the bill at this late date and advocated waiting until next session for this type of legislation.

Rep. McMahan had a question about the Tobacco Trust Account. How much money actually are we talking - $25 million - diverting that into servicing the debt on these buildings – what is the total amount that is actually going into that account each year?

Mr. Johnson replied to Rep. McMahan's question that in the master settlement agreement for '03-04, they are forecasting that North Carolina would receive a total of $146 million dollars which was divided into three pieces – 50% of the money would go to the Golden Leaf Foundation, 25% to Health and Wellness and 25% to the Tobacco Trust. Rep. McMahan asked if we were actually taking out up to $26 million in '05-'06, $25.2 million of the Health and Wellness portion. Mr. Johnson replied that it was slightly different – '04-'05 would begin the first debt service payment of $6 million that would be for the biopharmaceutical facility - then the next year you go to bid on the cancer center - then we get to about $12.5 million a year from the Tobacco Trust and from Health and Wellness --the first year, only one project of about $6 million, $3 million from each trust fund.

Rep. Cox was concerned that the bill was being brought forth at such a late date and perhaps should be considered next session.

Rep. Womble suggested that the committee not rush through this and send it to a study committee.

Rep. Rayfield said he was not against the items in the bill, but felt that the timing was wrong. He expressed concern about funding for instructors and equipment for the cancer center, in addition to the $175 million for the building and what support the General Assembly would be required to give it.

Rep. Capps felt we needed to stop spending and kill the bill, but Rep. Hackney rebutted that this had nothing to do with the state budget because the money was from the tobacco settlement monies and not from the general fund. Rep. Hackney felt building the cancer center was an appropriate use of tobacco settlement monies.

Chairman Luebke called for a vote of Rep. Gibson's motion to give the PCS for H.B. 1753 a favorable report. The motion failed by a vote of 13-14.

Rep. Gibson made a motion for another PCS without the biotech piece, the cancer piece and the corporate income tax piece.

Canaan Huie said the following items would be in the PCS: Part 1A (Film Incentives & 1B (Condemnation Authority of Railroads) and 1D (Industry and Pollution Control Facility Bonds).

Rep. Gibson said that his motion took the majority of the money out of the bill because he felt that was the main opposition to the bill.

Chairman Luebke, prior to taking a vote on the motion, restated the parts of the bill that were still included: Sections 1A.1, 1A.2, 1B.1, 1D.1, 1D.2, 1D.3 and some general provisions at the end, 3.1 and 3.2 that remained in the committee substitute.

Rep. Holliman asked how much money was left in the bill.

Mr. Huie answered that the only piece left that had financial impact would be the grant portion and that was a limitation. It was a million dollar provision.

After considerable discussion, Rep. Luebke called for a vote on the motion to have the PCS before the committee. Division was called for and the motion passed by a vote of 15-12.

Rep. Gibson moved for a favorable report on his new PCS.

Rep. Gray sent forth an amendment to reinstate Sections 1C.1 and 1C.2, the corporate income tax reduction.

Rep. Hackney was opposed to the amendment because, being a tax cut, he felt it was not the appropriate time to reduce State revenues.

Rep. Buchanan said the committee was where it was at the beginning of the meeting, that he had understood there would no amendments, and that it would be voted up or down. He moved for adjournment, which failed by 16-10.

Rep. Weiss asked how much we would spend on the Bill-Lee Act next year. Staff replied it was around $172 million. She asked how much money was in the new economic incentive package that passed the House and was in the Senate now – the other part of this bill. Staff replied that in the original House version, the maximum impact from the grants was approximately $45 million per year – it was about $20 million per year in the Senate version, which did not include the tourism grants. She also asked how much "walk-around" money was in the Governor's budget for Commerce. Rep. Owens replied that there was no new money in it, but they had $4 million left from last year.

Rep. Gray called for the ayes and nays on his amendment. The vote was 20 in favor with 9 against.

Rep. Gibson moved for a favorable report as to amended PCS, unfavorable to original PCS. Vote was taken by voice vote and the PCS was given a favorable report.

There being no further business, the Chair adjourned the meeting at 9:20 P.M. to meet on Wednesday, October 2, at 8:30 A.M.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris for Rita Harris
Committee Assistant

ATTACHMENTS:

Committee Report for H.B. 1753
Proposed Committee Substitute for H. B. 1753
Amendment to H.B. 1753

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, LUEBKE, WAINWRIGHT & BUCHANAN** for the Committee on **FINANCE.**

☒ Committee Substitute for
H.B. 1753 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE BILL LEE ACT TAX CREDITS FOR INVESTING IN MACHINERY AND EQUIPMENT AND FOR JOB CREATION.

☐ 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, 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)

Date 10.01b.02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1753
PROPOSED COMMITTEE SUBSTITUTE H1753-PCS4337-LY-62

Short Title: Bond and Incentive Act of 2002. (Public)

Sponsors:

Referred to:

June 17, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE FILM INDUSTRY DEVELOPMENT ACCOUNT; TO AMEND THE CONDEMNATION AUTHORITY OF NORTH CAROLINA RAILROADS; TO ESTABLISH A GRADUATED RATE STRUCTURE FOR THE CORPORATE INCOME TAX; AND TO AMEND PROVISIONS RELATING TO INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING.

The General Assembly of North Carolina enacts:

PART 1. FILM INDUSTRY INCENTIVES

SECTION 1.1. G.S. 143B-434.3(a) reads as rewritten:

"(a) Creation and Purpose of Account. – There is created in the Department of Commerce, Division of Tourism, Film, and Sports Development, the Film Industry Development Account to provide annual grants as incentives to production companies that engage in production activities in this State. The Division of Tourism, Film, and Sports Development shall administer this program in accordance with the following provisions:

(1) To be eligible for a grant, a production company must engage in production activities in this ~~State.~~State with expenditures in this State of at least one million dollars ($1,000,000). A grant may not be used for political or issue advertising.

(2) A grant may not exceed fifteen percent (15%) of the amount the production company spends for goods and services in this State during the calendar year.

(3) A grant may not exceed two hundred thousand dollars ($200,000) per production."

SECTION 1.2. The Revenue Laws Study Committee created in Article 12L of Chapter 120 of the General Statutes shall study options for additional economic

incentives for the film industry and shall make a report to the 2003 General Assembly on its findings, including any recommendations for legislative action.

SECTION 1.3. This part is effective when it becomes law.

PART 2. NORTH CAROLINA RAILROAD CONDEMNATION AUTHORITY

SECTION 2.1. G.S. 40A-3(a)(4) reads as rewritten:

"(a) Private Condemnors. – For the public use or benefit, the persons or organizations listed below shall have the power of eminent domain and may acquire by purchase or condemnation property for the stated purposes and other works which are authorized by law.

...

(4) Any railroad company has the power of eminent domain for the purposes of: constructing union depots; maintaining, operating, improving or straightening lines or of altering its location; constructing double tracks; constructing and maintaining new yards and terminal facilities or enlarging its yard or terminal facilities; connecting two of its lines already in operation not more than six miles apart; or constructing an industrial ~~siding ordered by the Utilities Commission as provided in G.S. 62-232.~~siding."

SECTION 2.2. This part is effective when it becomes law.

PART 3. CORPORATE INCOME TAX RATE CHANGE

SECTION 3.1. G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. Corporations.**

A tax is imposed on the State net income of every C Corporation doing business in this State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

~~Income Years Beginning~~	~~Tax~~
~~In 1997~~	~~7.5%~~
~~In 1998~~	~~7.25%~~
~~In 1999~~	~~7%~~
~~After 1999~~	~~6.9%.~~

(1) On State net income up to three thousand dollars ($3,000), one percent (1%).

(2) On State net income over three thousand dollars ($3,000) and up to six thousand dollars ($6,000), two percent (2%).

(3) On State net income over six thousand dollars ($6,000) and up to nine thousand dollars ($9,000), three percent (3%).

(4) On State net income over nine thousand dollars ($9,000) and up to twelve thousand dollars ($12,000), four percent (4%).

(5) On State net income over twelve thousand dollars ($12,000) and up to fifteen thousand dollars ($15,000), five percent (5%).

(6) On State net income over fifteen thousand dollars ($15,000) and up to thirty thousand dollars ($30,000), six percent (6%).

(7) On State net income over thirty thousand dollars ($30,000), six and nine-tenths percent (6.9%)."

SECTION 3.2. This part is effective for taxable years beginning on or after January 1, 2004.

PART 4. INDUSTRIAL AND POLLUTION CONTROL FACILITIES FINANCING

SECTION 4.1. The General Assembly finds that there are small manufacturing companies in the State that are eligible for industrial development bond financing for capital improvements and expansions, but are not able to take advantage of that financing because of the administrative costs involved. This problem can be addressed by reviving the composite bond program under Chapter 159D of the General Statutes, under which the North Carolina Capital Facilities Finance Agency could combine several series of bonds into a single bond offering, thereby reducing transaction costs and permitting eligible small manufacturers to access tax exempt financing for capital investments. The composite bond program would be facilitated by the changes proposed to Chapter 159D in this part that will streamline the procedures for composite issues by requiring only one public hearing and align the review standard for bonds issued as part of a composite bond program with the standard for bonds issued by county industrial development projects.

SECTION 4.2. G.S. 159D-7(d) reads as rewritten:

"(d) Public ~~Hearing.~~Hearing, Generally. – The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d1) Public Hearing, Multiple Projects. – Notwithstanding subsection (d) of this section, in the event the bonds proposed to be issued are to finance more than one project, the public hearing shall be conducted by the agency or by a hearing officer designated by the agency to conduct public hearings. The public hearing may be held at any location designated by the agency. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in each county in which a proposed project is to be located not less than 14 days before the public hearing. The

notice shall describe generally the bonds proposed to be issued and any proposed project in that county, including its general location, and any other information the agency considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. A copy of the notice of public hearing must be mailed to the board of county commissioners of any county in which a proposed project is to be located and to the governing body of any municipality in which a proposed project is to be located."

SECTION 4.3. G.S. 159D-8(b) reads as rewritten:

"(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them."

SECTION 4.4. This part becomes effective January 1, 2003.

PART 5. GENERAL PROVISIONS

SECTION 5.1. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

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

Rep.)
) _____
Sen.)

moves to amend the bill on page _____, line _____,

by Motion for fav Rpt failed for consideration
Rep. Gibson offered a ~~Sub~~ C.S. w the following parts:
Part 1A
Part 1B
Part 1D.
motion passed -

Rep Gray offered an amendment to the proposed PCS putting Part 1C into the proposed PCS
Amendment passed
20-9

Rep Gibson, incorporate Gray Am and motion for FR to Amended PCS and Unfav to original bill.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

Gray Amendment

(Revised 6-02)

ROLL CALL VOTE

20 YES 9 NO = 29 (TOTAL)

HB# 1753
SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander			Wainwright		
Allen	✓		Weiss		✓
Blust	✓		Willingham		✓
Buchanan	✓		Wilson	✓	
Capps	✓		Womble		✓
Cox	✓				
Decker	✓				
Dedmon					
Eddins	✓				
Edwards		✓			
Gibson	✓				
Gray	✓				
Hackney (Speaker Pro Tem)		✓			
Hill	✓				
Holliman	✓				
Hurley		✓			
Jarrell		✓			
Johnson	✓				
Luebke		✓			
McComas	✓				
McCombs	✓				
McMahan	✓		Ex officio Members		
Morris	✓		Majority Leader Baddour	✓	
Pope			Majority Whip Earle		✓
Rayfield	✓		Majority Whip Cunningham	✓	
Starnes					

MINUTES
HOUSE FINANCE COMMITTEE

October 2, 2002

The House Committee on Finance met on Wednesday, October 2, 2002 in Room 544 of the Legislative Office Building at 8:30 a..m. The following members were present: Chairmen Allen, Buchanan and Luebke, Vice Chairs Hill and Jarrell, and Representatives, Baddour, Cox, Cunningham, Decker, Dedmon, Eddins, Edwards, Gibson, Hackney, Hurley, Johnson, McCombs, McComas, McMahan, Rayfield, Weiss, and Womble. The following Sergeant-at-Arms staff was present: Bob Fowler, Ann Lassiter, Dusty Rhodes and James Worth. Staff including Richard Bostic, Trina Griffin, Linda Millsaps, and Martha Walston were in attendance. A Visitor Registration list is attached and made part of these minutes.

Chairman Buchanan called the meeting to order and stated that other business, SB 1136 and outstanding bills with an indefinite postponement (attached), also had been added to the agenda. He recognized Representative Gibson to explain SB 1136 A BILL TO BE ENTITLED AN ACT TO INCREASE THE ACREAGE LIMITATION ON SATELLITE ANNEXATIONS FOR THE VILLAGE OF MARVIN, AND TO MAKE A SATELLITE ANNEXATION TO THE TOWN OF BRUNSWICK. Representative Gibson explained that SB 1136 explained that this bill was not controversial and the Town of Marvin and Union County and to Town of Brunswick and Columbus County and urged support of the bill. After a brief discussion, Representative Hurley made a motion for a favorable report. The motion carried.

The next bill on the agenda was SB 1455 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK, AND TO CREATE A PENSION ASSURANCE FUND TO PROTECT THE RETIREMENT SAVINGS AND INVESTMENTS OF THE CITIZENS OF NORTH CAROLINA. Chairman Buchanan recognized Representative Allen for a motion to adopt Proposed House Committee Substitute S1455-CSRUf-121 {v.7} for discussion. Senator Rand, sponsor of the bill, was recognized to explain the bill. Senator Rand explained the Proposed House Committee Substitute for SB 1455 would strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators. Additionally the bill would prohibit the State from contracting with businesses that have any officers or directors who have been convicted of securities fraud within the past 10 years, prohibit the State from contracting with vendors that are incorporated in a tax haven country after December 31, 2001 but the United States is the principal market for the public trading of their corporations stock, and create a pension assurance fund to protect the retirement savings and investments of the citizens of North Carolina.

Chairman Buchanan recognized several members for questions regarding their concerns with this legislation. The NC Bar Association, the Secretary of State's office and others addressed the committee with their concerns pointing out more time was needed to understand and study the language of this bill. Representative McMahan was recognized to send forth an amendment and after a brief explanation of the amendment, Representative McMahan made a motion to adopt the

amendment. The motion carried and the amendment was adopted. Representative Hill moves that Proposed Committee Substitute SB 1455 be rolled into a committee substitute, given a favorable report and be re-referred to the Committee on Appropriations. A vote was taken on Representative Hill's motion and adopted. Explanation and summary attached.

Chairman Buchanan recognized Representative Allen for a motion to report outstanding bills in the Finance Committee to be reported out with an indefinite postponement. The motion carried. Attached.

The meeting adjourned at 9:40 a.m.

Respectfully submitted,

Representative Monroe Buchanan
Chairman

Glenda O. Jones
Assistant to the Committee

AGENDA

House Finance Committee

October 2, 2002
8:30 a.m.
Room 544 LOB

Cochairs

Representative Gordon Allen ***Representative Paul Luebke***
Representative Charles Buchanan ***Representative William Wainwright***

CALL TO ORDER

BILLS TO BE HEARD

SB 1455 STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS (SENATOR RAND)

ADJOURNMENT

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — OCTOBER 2, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	NCRR
	Sec of State
	SEC of STATE
	Sec of State
	SoSt.
	Sec. of State
	Sec. of State
	AIA North Carolina
	University System
	VNC
	MTE
	Bode, Call & Stroupe

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — **Name of Committee**

OCTOBER 2, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Norfleet Rudisill	NC Bar Assoc.
Byron Kirkland	NC Bar Assoc.
Bill Scoggin	FCLT
Dick Carlton	Carlton Alexander
VL McBride	NCTA
Bill Rustin	
Lee-Ann Coe	NCPA
Joe Stewart	NC Dept of State Treasurer
Betty Turner	Bank of America
Roz Swift	NCCCC

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON FINANCE — OCTOBER 2, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN McMILLAN	Mary Fulton
Ed TURLINGTON	Brooks Pierce
Mark Benson	Capitol Group
MPK Hale	NC DEPT OF INSURANCE
	NCRA

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN. BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1136 A BILL TO BE ENTITLED AN ACT TO INCREASE THE ACREAGE LIMITATION ON SATELLITE ANNEXATIONS FOR THE VILLAGE OF MARVIN, AND TO MAKE A SATELLITE ANNEXATION TO THE TOWN OF BRUNSWICK.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 3

SENATE BILL 1136

Finance Committee Substitute Adopted 9/24/02
Third Edition Engrossed 9/25/02

Short Title: Marvin Annexations. (Local)

Sponsors:

Referred to:

June 3, 2002

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE ACREAGE LIMITATION ON SATELLITE ANNEXATIONS FOR THE VILLAGE OF MARVIN, AND TO MAKE A SATELLITE ANNEXATION TO THE TOWN OF BRUNSWICK.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-58.1(b)(5) reads as rewritten:

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

...

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ~~ten percent (10%)~~ fifty percent (50%) of the area within the primary corporate limits of the annexing city."

SECTION 1.1. The following described property, which shall be considered satellite corporate limits, is added to the corporate limits of the Town of Brunswick:

Beginning at a point marked by an iron at the southern intersection of N.C. Hwy. 130 with N.C. Hwy. 905, said point being located at a tie line South 19 degrees 33 minutes East 83.55 feet from a point marked by a nail at the intersection of the center lines of aforesaid highways; thence from said point of beginning and with the western 30 foot right of way line of N.C. Hwy. 130 South 40 degrees 35 minutes East 230.29 feet to a point marked by an iron in the center of a ditch; thence with the center of said ditch, also a line of lands of Kenneth Sasser, South 52 degrees 06 minutes West 199.74 feet to a point marked by an iron where said ditch intersects the eastern 30 foot right of way line of N.C. Hwy. 905; thence with the eastern right of way line of N.C. Hwy. 905 North 01 degrees 30 minutes East 297.70 to the point of beginning containing 0.52 acres, more or less, and being according to a survey dated January 27, 1984 by Lloyd R. Walker, Registered Land Surveyor.

SECTION 2. Section 1 of this act applies to the Village of Marvin only.

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

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **ALLEN, BUCHANAN, LUEBKE, WAINWRIGHT** (Chair/Chairs)
for the Committee on **FINANCE**.

☒ Committee Substitute No. 3 for
S.B. 1455 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD, AND TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK.

☐ 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 House committee substitute bill ~~(#)~~, ☒ which changes the title, unfavorable as to ~~(the original bill)~~ Senate Committee Substitute Bill # 3), (and recommendation that the ~~committee~~ House committee substitute bill ~~#)~~ be re-referred to the Committee on Appropriations.)

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

5/13/02

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1455

Judiciary I Committee Substitute Adopted 7/11/02
Finance Committee Substitute Adopted 7/18/02
Appropriations/Base Budget Committee Substitute Adopted 7/24/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1455-PCS7810-SVf-88

Short Title: Strengthen Securities Fraud Enforcement Laws. (Public)

Sponsors:

Referred to:

June 18, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE GENERAL STATUTES COMMISSION AND OTHER INTERESTED PARTIES TO STUDY THE PROVISIONS OF SENATE BILL 1455, 4TH EDITION, STRENGTHEN SECURITIES FRAUD ENFORCEMENT LAWS, INTRODUCED IN THE 2001 GENERAL ASSEMBLY, AND TO MAKE RECOMMENDATIONS TO THE 2003 REGULAR SESSION OF THE 2003 GENERAL ASSEMBLY; TO INCREASE CERTAIN FILING AND RENEWAL FEES WITH THE SECRETARY OF STATE; TO FUND ADDITIONAL SECURITIES INVESTIGATOR POSITIONS; TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD; TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK; AND TO CREATE A PENSION ASSURANCE FUND TO PROTECT THE RETIREMENT SAVINGS AND INVESTMENTS OF THE CITIZENS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes Commission is directed to study the provisions of Senate Bill 1455, 4th Edition, Strengthen Securities Fraud Enforcement Laws, introduced in the 2001 General Assembly, in consultation with the Department of the Secretary of State, the Securities Industry Association, the North Carolina Bar Association, and other interested parties, and to make recommendations to the 2003 Regular Session of the 2003 General Assembly.

SECTION 2. G.S. 78C-17(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two~~ three hundred dollars ~~($200.00)~~($300.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee."

SECTION 3. G.S. 78C-17(b1) reads as rewritten:

"(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of ~~two~~ three hundred dollars ~~($200.00)~~($300.00) and a renewal notice filing fee of ~~two~~ three hundred dollars ~~($200.00).~~($300.00)."

SECTION 4. G.S. 78A-31(a)(4), as amended by Section 29A.37 of Senate Bill 1115 of the 2001 General Assembly, reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

...

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of two hundred fifty dollars ~~($200.00)~~($250.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period."

SECTION 5. Article 3 of Chapter 143 is amended by adding a new section to read:

"**§ 143-59.2. Certain vendors prohibited from contracting with State.**

(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. – A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

(d) No Duty to Investigate. – Nothing in this section imposes a duty on any department, institution, or agency of the State government to investigate or verify the information contained in a vendor's certification."

SECTION 6. G.S. 143-59.1 reads as rewritten:

"**§ 143-59.1. Contracts with certain foreign vendors.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) ~~A~~a vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor or an affiliate of the vendor that is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) ~~For the purpose of this section, the term "affiliate" has the meaning provided~~ Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles."

SECTION 7. Article 6 of Chapter 147 is amended by adding a new section to read:

"**§ 147-69.4. Pension Assurance Fund established.**

(a) Fund Established. – There is established the Pension Assurance Fund in the Office of the State Treasurer that shall be used to provide a means to protect the retirement savings and investments of the citizens of North Carolina who are employed by private industry.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.

(c) Fund Purposes. – Moneys from the Fund may be used to compensate individuals who lose a significant portion of their retirement savings, through no fault of their own, that are invested in 401k plans or other pension plans that are funded in whole or in part with the stock of their employer companies as the result of a violation of Chapter 78A of the General Statutes or a violation of the Securities Act of 1933 or the Securities Exchange Act of 1934. Payments from the Fund shall be made by the State Treasurer as provided by State law."

SECTION 8. The State Treasurer, in consultation with the Secretary of State, shall develop legislative recommendations regarding the best methods for funding the Pension Assurance Fund established by this act, including the use of punitive damages and treble damages awarded in actions involving securities fraud brought by the State or by private individuals, and the proper guidelines for the payment of claims from the Fund. The Legislative Research Commission may also study this issue. The State Treasurer and the Secretary of State shall report their recommendations to the General Assembly on or before March 1, 2003, and if the Legislative Research Commission authorizes a study of this issue, the State Treasurer shall also forward a copy of its report to that committee.

SECTION 9. G.S. 147-69.2(a) reads as rewritten:

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

(1) The Teachers' and State Employees' Retirement System,
(2) The Consolidated Judicial Retirement System,
(3) The Teachers' and State Employees' Hospital and Medical Insurance Plan,
(4) The General Assembly Medical and Hospital Care Plan,
(5) The Disability Salary Continuation Plan,
(6) The Firemen's and Rescue Workers' Pension Fund,
(7) The Local Governmental Employees' Retirement System,
(8) The Legislative Retirement System,
(9) The Escheat Fund,
(10) The Legislative Retirement Fund,
(11) The State Education Assistance Authority,
(12) The State Property Fire Insurance Fund,
(13) The Stock Workers' Compensation Fund,
(14) The Mutual Workers' Compensation Fund,
(15) The Public School Insurance Fund,
(16) The Liability Insurance Trust Fund,
(17) Trust funds of The University of North Carolina and its constituent institutions deposited with the State Treasurer pursuant to G.S. 116-36.1,
(17a) North Carolina Veterans Home Trust Fund,
(17b) North Carolina National Guard Pension Fund,
(17c) Retiree Health Premium Reserve Account, ~~and~~
(17d) Pension Assurance Fund, and

(18) Any other special fund created by or pursuant to law for purposes other than meeting appropriations made pursuant to the Executive Budget Act."

SECTION 10. There is hereby appropriated to the Office of the Secretary of State for the 2002-2003 fiscal year the sum of one hundred fifty-one thousand one hundred twenty-five dollars ($151,125) for recurring expenses and fifteen thousand nine hundred ninety dollars ($15,990) for nonrecurring expenses for three additional unsworn securities investigators in the Securities Division.

SECTION 11. Sections 2, 3, and 4 of this act become effective November 1, 2002, and apply to fees assessed on or after that date. Sections 5 and 6 of this act become effective November 1, 2002, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1455

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

S1455-ASV-112 [v.2]

Date _____,2002

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Representative McMahan

moves to amend the bill on page 1, lines 2-5, by rewriting the lines to read:
"AN ACT TO AUTHORIZE THE GENERAL STATUTES COMMISSION AND OTHER INTERESTED PARTIES TO STUDY THE PROVISIONS OF SENATE BILL 1455, 4TH EDITION, STRENGTHEN SECURITIES FRAUD ENFORCEMENTS LAWS, INTRODUCED IN THE 2001 GENERAL ASSEMBLY, AND TO MAKE RECOMMENDATIONS TO THE 2003 REGULAR SESSION OF THE 2003 GENERAL ASSEMBLY, TO INCREASE CERTAIN FILING AND RENEWAL FEES WITH THE SECRETARY OF STATE, TO FUND ADDITIONAL SECURITIES INVESTIGATOR POSITIONS, AND TO PROHIBIT THE STATE FROM CONTRACTING";

And on page 1, line 12 through page 2, line 18, by deleting the lines and substituting the following:

SECTION 1. The General Statutes Commission is directed to study the provisions of Senate Bill 1455, 4th Edition, Strengthen Securities Fraud Enforcement Laws, introduced in the 2001 General Assembly, in consultation with the Department of the Secretary of State, the Securities Industry Association, the North Carolina Bar Association, and other interested parties, and to make recommendation to the 2003 Regular Session of the 2003 General Assembly.";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1455

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

S1455-ASV-112 [v.2]

And by deleting sections 2-18, 21, and 23-29 and by renumbering the remaining sections accordingly;

And on page 17, lines 6-12, by rewriting the lines to read:

"**SECTION 11.** Sections 2, 3 and 4 of this act become effective November 1, 2002, and apply to fees assessed on or after that date. Sections 5 and 6 of this act become effective November 1, 2002, and apply to contracts entered into on or after that date. The remainder of this act is effective when it becomes law.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S D

SENATE BILL 1455

Judiciary I Committee Substitute Adopted 7/11/02
Finance Committee Substitute Adopted 7/18/02
Appropriations/Base Budget Committee Substitute Adopted 7/24/02
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1455-CSRUf-121 [v.7]

9/30/2002 7:20:34 PM

Short Title: Strengthen Securities Fraud Enforcement Laws. (Public)

Sponsors:

Referred to:

June 18, 2002

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS TO PREVENT SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH BUSINESSES THAT HAVE ANY OFFICERS OR DIRECTORS WHO HAVE BEEN CONVICTED OF SECURITIES FRAUD, TO PROHIBIT THE STATE FROM CONTRACTING WITH VENDORS THAT ARE INCORPORATED IN A TAX HAVEN COUNTRY BUT THE UNITED STATES IS THE PRINCIPAL MARKET FOR THE PUBLIC TRADING OF THEIR CORPORATION'S STOCK, AND TO CREATE A PENSION ASSURANCE FUND TO PROTECT THE RETIREMENT SAVINGS AND INVESTMENTS OF THE CITIZENS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 78A-12 reads as rewritten:

"**§ 78A-12. Manipulation of market.**

(a) In addition to the prohibitions of G.S. 78A-8, it is unlawful for any person ~~to:~~to do any of the following:

(1) Willfully quote a fictitious price with respect to a ~~security;~~security.

(2) Effect a transaction in a security which involves no change in the beneficial ownership of the security, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(3) Enter an order for the purchase of a security with the knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the sale of the security has been, or will be, entered by or for the same person, or an affiliated

person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security;~~security.

(4) Enter an order for the sale of a security with knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the purchase of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the ~~security; or~~security.

(5) Employ any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a ~~security.~~security, including the issuance of analyses, reports, or financial statements that are false or misleading in any material respect.

(b) A transaction effected in compliance with the applicable provisions of the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission thereunder is not manipulation of the market under subsection (a) of this section."

SECTION 2. G.S. 78A-25(a)(1)b. reads as rewritten:

"b. The issuer and any predecessors during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting ~~practices,~~principles, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend or distribution provision outstanding at the date the registration statement is filed and equal at least five percent (5%) of the amount of such outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for three full fiscal years, equal at least five percent (5%) of the amount (as measured in clause (i)) of all securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this State) are issued;".

SECTION 3. G.S. 78A-37(a) reads as rewritten:

"(a) A dealer or salesman may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to G.S. 78A-63(f). The application shall contain whatever information the Administrator by rule requires concerning such matters as (i) the applicant's form and

place of organization; (ii) the applicant's proposed method of doing business; (iii) the qualifications and business history of the applicant; in the case of a dealer, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer, and a representation that the applicant dealer is duly registered as a dealer under the Securities Exchange Act of 1934; (iv) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (v) the applicant's financial condition and history. If no denial order is in effect and no proceeding is pending under G.S. 78A-39, registration becomes effective at noon of the thirtieth day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a dealer automatically constitutes registration of any salesman who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78A-39 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 4. G.S. 78A-49(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the Administrator shall be audited and shall be prepared in accordance with generally accepted accounting ~~practices.~~principles, except where the Administrator may by rule or order provide otherwise. In determining whether to permit the filing of financial statements that have not been audited, the Administrator shall consider all of the following factors:

(1) Whether lesser standards for financial statements will impair investor protection.

(2) The cost of preparation of audited financial statements relative to the proposed offering amount.

(3) Whether recently audited financial statements of the issuer are available in addition to current interim statements.

(4) Whether the issuer has commenced significant business operations.

(5) Any other factors that are relevant to the protection of the investing public."

SECTION 5. G.S. 78A-56(a) reads as rewritten:

"(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), ~~78A-12,~~ 78A-13, 78A-14, 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the ~~security.~~security, together with punitive damages consistent with Chapter 1D of the General Statutes. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition."

SECTION 6. G.S. 78A-56(b) reads as rewritten:

"(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the ~~security.~~security, together with punitive damages consistent with Chapter 1D of the General Statutes. Damages are the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security."

SECTION 7. G.S. 78A-56 is amended by adding a new subsection to read:

"(b1) A person who willfully violates G.S. 78A-12 is liable to a person who purchases or sells a security, other than a security traded on a national securities exchange or quoted on a national automated quotation system administered by a self-regulatory organization, at a price that was affected by the act or transaction for the damages sustained as a result of the act or transaction, unless the person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by which the liability is alleged to exist. Damages are the difference between the price at which the securities were purchased or sold and the market value the securities would have had at the time of the person's purchase or sale in the absence of the act or transaction, plus interest at the legal rate of this State from the date of the act or transaction, costs, and reasonable attorneys' fees determined by the court, together with punitive damages consistent with Chapter 1D of the General Statutes."

SECTION 8. G.S. 78A-56(c) reads as rewritten:

"(c) Every person who directly or indirectly controls a person liable under subsection ~~(a) or (b),~~ (a), (b), or (b1), every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, every employee of ~~such a~~the person who materially aids in the act or transaction, and every ~~dealer or salesman~~ dealer, salesperson or other person who materially aids in the sale are also liable jointly and severally with and to the same extent as ~~such~~ the person, unless the person who is so liable sustains the burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable care ~~should~~ could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable."

SECTION 9. G.S. 78A-56(f) reads as rewritten:

"(f) No person may sue under this section more than ~~two~~ three years after discovery of the violation that gives rise to the cause or action, but in no case later than five years after the sale or contract of ~~sale.~~sale, except that if a person who may be liable under this section engaged in any fraudulent or deceitful act in order to induce the person to forego or postpone commencing an action under this section, the suit must be commenced not later than three years after the discovery by the person of the facts constituting the fraud or deceit."

SECTION 10. G.S. 78A-57 reads as rewritten:

"(a) Any person who willfully violates any provision of this Chapter except G.S. 78A-8, 78A-9, 78A-11, 78A-12, 78A-13, or 78A-14 or who willfully violates any rule or order under this ~~Chapter, or who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon;~~Chapter shall be guilty of a Class I felony, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.

(a1) Any person who willfully violates G.S. 78A-8, 78A-11, ~~78A-12,~~ 78A-13, or 78A-14 ~~shall, upon conviction be punished as a Class H felon.~~shall be guilty of a felony. If the total value of the consideration involved in a single act or for a series of related acts in a common scheme or plan is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the total value of the consideration involved in a single act or for a series of related acts in a common scheme or plan is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a2) Any person who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect shall be guilty of a Class H felony. Any other willful violation of G.S. 78A-9 shall constitute a Class 2 misdemeanor.

(a3) Any person who willfully violates G.S. 78A-12 shall be guilty of a Class H felony. It shall be a defense to a violation of G.S. 78A-12(5) if the person proves that the violation was the result of a good faith mistake of fact.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in

the prosecution of such violation or violations on behalf of the State. Upon approval of the Administrator, such employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of such violations without receiving compensation from the district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law.

(d) As used in this section, the phrase "total value of consideration" means in the case of a sale of securities, the value of consideration received, directly or indirectly, by the seller, and in the case of a purchase of securities, the value of the securities purchased."

SECTION 11. Article 7 of Chapter 78A of the General Statutes is amended by adding a new section to read:

"**§ 78A-58. Obstruction of investigation.**

Any person who, for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter, willfully makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement, or who willfully (i) creates, causes to be made, or produces any record, report, or document knowing that it is false or misleading in any material respect; (ii) destroys or alters any record, report or document; (iii) conceals or secretes any record, report, or document; or who willfully hinders or obstructs the Administrator or the Administrator's designated representative in the performance of the Administrator's duties under this Chapter, shall be guilty of a Class H felony."

SECTION 12. G.S. 78A-63(a) reads as rewritten:

"(a) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-13, 78A-14, 78A-24, 78A-31, 78A-36(a), and 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or (ii) an offer to buy is made and accepted in this State."

SECTION 13. G.S. 78A-63(b) reads as rewritten:

"(b) ~~Sections~~ G.S. 78A-8, 78A-10, 78A-36(a) and 78A-56(b) apply to persons who buy or offer to buy when (i) an offer to buy is made in this State, or (ii) an offer to sell is made and accepted in this State."

SECTION 14. G.S. 78A-63 is amended by adding a new subsection to read:

"(b1) G.S. 78A-12 applies when any act instrumental to effecting prohibited conduct is done in this State, whether or not either party is then present in this State."

SECTION 15. G.S. 78C-2(1) reads as rewritten:

"(1) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment

adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as a part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser representative or a person excluded from the definition of investment adviser representative pursuant to ~~G.S. 78C-2(3)c.;~~G.S. 78C-2(3)c.

b. A bank, savings institution, or trust ~~company;~~company.

c. A lawyer, accountant, engineer, or teacher whose performance of any such services is solely incidental to the practice of his ~~profession;~~profession.

d. A dealer or its salesman whose performance of these services is solely incidental to the conduct of its business as a dealer and who receives no special compensation for ~~them;~~them.

e. A publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each ~~client;~~client.

f. A person solely by virtue of such person's services to or on behalf of any "business development company" as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 provided the business development company is not an "investment company" by reason of Section 3(c)(1) of the Investment Company Act of 1940, as both acts were in effect on ~~June 1, 1988;~~June 1, 1988.

g. A personal representative of a decedent's estate, guardian, conservator, receiver, attorney in fact, trustee in bankruptcy, trustee of a testamentary trust, or a trustee of an inter vivos trust, not otherwise engaged in providing investment advisory services, and the performance of these services is not a part of a plan or scheme to evade registration or the substantive requirements of this ~~Chapter;~~Chapter.

h. A licensed real estate agent or broker whose only compensation is a commission on real estate ~~sold;~~sold.

i. An individual or company primarily engaged in acting as a business broker whose only compensation is a commission on the sale of a ~~business;~~business.

j. An individual who, as an employee, officer or director of, or general partner in, another person and in the course of performance of his duties as such, provides investment advice

to such other person, or to entities that are affiliates of such other person, or to employee benefit plans of such other person or its affiliated entities, or, with respect to such employee benefit plans, to employees of such other person or its affiliated ~~entities;~~entities.

~~k. Any person who is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of said act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to said Section 203(b)(3) provided that any reference in this sub-subsection to any statute, rule or regulation shall be deemed to incorporate said statute, rule or regulation (and any statute, rule or regulation referenced therein) as in effect on June 1, 1988;~~

l. An employee of a person described in subdivision b., e., f., g., h., or j. of G.S. 78C-2(1) acting on behalf of such person within the scope of his ~~employment;~~employment.

l 1. An investment adviser who is covered under federal law as defined in subdivision (4) of this section.

m. Such other persons not within the intent of this subsection as the Administrator may by rule or order designate."

SECTION 16. G.S. 78C-16(a) reads as rewritten:

"(a) It is unlawful for any person to transact business in this State as an investment adviser unless:

(1) The person is registered under this Chapter;

(2) The person's only clients in this State are investment companies as defined in the Investment Company Act of 1940, other investment advisers, investment advisers covered under federal law, dealers, banks, trust companies, savings institutions, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars ($1,000,000), and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the Administrator; ~~or~~

(3) The person has no place of business in this State, and during the preceding 12-month period has had not more than five clients, other than those specified in subdivision (2) of this subsection, who are residents of the ~~State.~~State; or

(4) The person is exempt from registration under the Investment Advisers Act of 1940 by operation of Section 203(b)(3) of that act or by operation of any rule or regulation promulgated by the United States Securities and Exchange Commission under or related to Section 203(b)(3) provided that any reference in this subdivision to any statute,

rule or regulation (and any statute, rule or regulation referenced therein) as in effect June 1, 1988."

SECTION 17. G.S. 78C-16(a1) reads as rewritten:

"(a1) It is unlawful for any person to transact business in this State as an investment adviser representative unless:

(1) The person is registered under this Chapter; or

(2) The person is an investment adviser representative employed by or associated with an investment adviser exempt from registration under ~~subdivision (2) or (3)~~ subdivision (2), (3), or (4) of subsection (a) of this section; or

(3) The person is an investment adviser representative employed by or associated with an investment adviser covered under federal law that is exempt from the notice filing requirements of G.S. 78C-17(a1)."

SECTION 18. G.S. 78C-17(a) reads as rewritten:

"(a) An investment adviser, or investment adviser representative may obtain an initial or renewal registration by filing with the Administrator or the Administrator's designee an application together with a consent to service of process pursuant to G.S. 78C-46(b) and paying any reasonable costs charged by the designee for processing the filings. The application shall contain whatever information the Administrator by rule requires concerning such matters as:

(1) The applicant's form and place of organization;

(2) The applicant's proposed method of doing business;

(3) The qualifications and business history of the applicant; in the case of an investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the investment adviser;

(4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;

(5) The applicant's financial condition and history; and

(6) Any information to be furnished or disseminated to any client or prospective client.

If no denial order is in effect and no proceeding is pending under G.S. 78C-19, registration becomes effective at noon of the 30th day after an application is filed. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of any amendment. Registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, executive officer, or director, or a person occupying a similar status or performing similar functions. After the Administrator institutes a proceeding under G.S. 78C-19 to postpone or deny an application for registration, withdrawal of the application shall be allowed only at such time and under such conditions as the Administrator may by order determine."

SECTION 19. G.S. 78C-17(b) reads as rewritten:

"(b) Every applicant for initial or renewal registration shall pay a filing fee of ~~two~~ three hundred dollars ~~($200.00)~~($300.00) in the case of an investment adviser, and forty-five dollars ($45.00) in the case of an investment adviser representative. When an application is denied or withdrawn, the Administrator shall retain the fee."

SECTION 20. G.S. 78C-17(b1) reads as rewritten:

"(b1) Every person acting as an investment adviser covered under federal law in this State shall pay an initial filing fee of ~~two~~ three hundred dollars ~~($200.00)~~($300.00) and a renewal notice filing fee of ~~two~~ three hundred dollars ~~($200.00).~~($300.00)."

SECTION 21. G.S. 78C-30(c) reads as rewritten:

"(c) The Administrator may by rule or order prescribe (i) the form and content of financial statements required under this Chapter, (ii) the circumstances under which consolidated financial statements shall be filed, and (iii) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements required to be filed with the Administrator shall be audited and shall be prepared in accordance with generally accepted accounting ~~practices.~~principles, except where the Administrator shall by rule or order provide otherwise."

SECTION 22. G.S. 78A-31(a)(4), as amended by Section 29A.37 of Senate Bill 1115 of the 2001 General Assembly, reads as rewritten:

"(a) The Administrator, by rule or order, may require the filing of any of the following documents with regard to a security covered under section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. § 77r(b)(2)):

...

(4) A notice filing pursuant to this section shall expire on December 31 of each year or some other date not more than one year from its effective date as the Administrator may by rule or order provide. A notice filing of the offer of securities covered under federal law that are to be offered for a period in excess of one year shall be renewed annually by payment of a renewal fee of two hundred fifty dollars ~~($200.00)~~($250.00) and by filing any documents and reports that the Administrator may by rule or order require consistent with this section. The renewal shall be effective upon the expiration of the prior notice period."

SECTION 23. G.S. 78C-38(a) reads as rewritten:

"(a) Any person who:

(1) Engages in the business of advising others, for compensation, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities, in violation of G.S. 78C-8(b), ~~G.S. 78C-16(a)~~G.S. 78C-16(a), (a1), or (b) (an action pursuant to a violation of G.S. 78C-16(b) may not be maintained except by those persons who directly received advice from the unregistered investment adviser representative), G.S. 78C-10(b), or of any rule or order under G.S.

78C-30(d) which requires the affirmative approval of sales literature before it is used, or

(2) Receives, directly or indirectly, any consideration from another person for advice as to the value of securities or their purchase or sale, whether through the issuance of analyses, reports or otherwise and employs any device, scheme, or artifice to defraud such other person or engages in any act, practice or course of business which operates or would operate as a fraud or deceit on such other person, in violation of G.S. 78C-8(a)(1) or (2),

is liable to any person who is given such advice in such violation, who may sue either at law or in equity to recover (i) the consideration paid for such advice together with interest thereon at the legal rate as provided in G.S. 24-1 from the date of payment of the consideration, plus (ii) the actual damages to such person proximately caused by such violation, plus (iii) costs of the action and reasonable attorneys' ~~fees.~~fees, together with punitive damages consistent with Chapter 1D of the General Statutes. An action based on violation of G.S. 78C-8(b) may not prevail where the person accused of the violation sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist."

SECTION 24. G.S. 78C-38(b) reads as rewritten:

"(b) Every person who directly or indirectly controls a person liable under subsection (a) of this section, including every partner, officer, or director of ~~such a~~the person, every person occupying a similar status or performing similar functions, every employee or associate of ~~such a~~the person who materially aids in the conduct giving rise to the liability, and every ~~dealer or salesman~~ dealer, salesperson or other person who materially aids in ~~such conduct~~ a violation is liable jointly and severally with and to the same extent as ~~such~~ the person, unless able to sustain the burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable care ~~should~~ could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable and as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

SECTION 25. G.S. 78C-38(d) reads as rewritten:

"(d) No person may sue under this section more than three years after discovery of the violation that gives rise to the cause of action, but in no case later than five years after the rendering of investment advice in violation of this ~~Chapter,~~Chapter; except that if a person who may be liable under this section engaged in any fraudulent or deceitful act in order to induce the person to forego or postpone commencing an action under this section, suit must be commenced not later than three years after the discovery by the person of the facts constituting the fraud or deceit. ~~except that in the case of a violation of G.S. 78C-8(a)(1) or (2) a person may sue under this section within two years after such person discovers or should have discovered, the facts constituting the violation.~~"

SECTION 26. G.S. 78C-39 reads as rewritten:

"**§ 78C-39. Criminal penalties.**

(a) Any person who willfully violates any provision of this Chapter except G.S. 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 ~~or who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon.~~shall be guilty of a Class I felony.

(a1) Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b) ~~shall, upon conviction, be punished as a Class H felon.~~shall be guilty of a felony. If the total consideration received, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the total consideration received, directly or indirectly, by the violator for a single act or for a series of related acts in a common scheme or plan is less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony.

(a2) Any person who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect shall be guilty of a Class H felony. Any other willful violation of G.S. 78C-9 shall constitute a Class 2 misdemeanor.

(a3) Any person who, for the purpose of interfering with the performance of any audit, examination, or investigation by the Administrator under this Chapter, willfully makes or causes to be made to the Administrator or the Administrator's designated representative any false or misleading oral or written statement, or who willfully (i) creates, causes to be made, or produces any record, report, or document that is false or misleading in any material respect; (ii) destroys or alters any record, report, or document; (iii) conceals or secretes any record, report, or document; or who willfully hinders or obstructs the Administrator or the Administrator's designated representative in the performance of the Administrator's duties under this Chapter, shall be guilty of a Class H felony.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of such violation or violations on behalf of the State. Upon approval of the Administrator, such employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of such violations without receiving compensation from the district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

SECTION 27. G.S. 78D-24(a) reads as rewritten:

"(a) Any person who willfully violates any provision of this Chapter ~~shall, upon conviction, be punished as a Class I felon.~~shall be guilty of a felony. If the actual losses caused by the violation or violations are one hundred thousand dollars ($100,000) or more, the person is guilty of a Class C felony. If the actual losses caused by the

violation or violations are less than one hundred thousand dollars ($100,000), the person is guilty of a Class H felony."

SECTION 28. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under G.S. 116B-72 and G.S. 116B-75;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(7a) Investigations conducted by the Securities Administrator pursuant to G.S. 78A-46(a), 78C-27(a), and 78D-21(a);

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term "reasonable specificity" means that degree of specificity reasonable under all the circumstances, and, with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class."

SECTION 29. G.S. 150B-21.1(a2) reads as rewritten:

"(a2) Notwithstanding the provisions of subsection (a) of this section, the Secretary of State may adopt temporary rules to implement the certification technology provisions of Article 11A of Chapter 66 of the General ~~Statutes and~~ Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators ~~Association~~ Association, Inc. for the purpose of promoting uniformity of state securities ~~regulation.~~regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

(1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;

(2) Accept oral and written comments on the proposed temporary rule; and

(3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

SECTION 30. Article 3 of Chapter 143 is amended by adding a new section to read:

"**§ 143-59.2. Certain vendors prohibited from contracting with State.**

(a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or services with any department, institution, or agency of the State government subject to the provisions of this Article if any officer or director of the vendor, or any owner if the vendor is an unincorporated business entity, within 10 years immediately prior to the date of the bid solicitation, has been convicted of any violation of Chapter 78A of the General Statutes or the Securities Act of 1933 or the Securities Exchange Act of 1934.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violation referenced in subsection (a) of this section within 10 years immediately prior to the date of the bid solicitation. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Void Contracts. – A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved by the Secretary of Administration. Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

(d) No Duty to Investigate. – Nothing in this section imposes a duty on any department, institution, or agency of the State government to investigate or verify the information contained in a vendor's certification."

SECTION 31. G.S. 143-59.1 reads as rewritten:

"**§ 143-59.1. Contracts with certain foreign vendors.**

(a) Ineligible Vendors. – The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with either of the following:

(1) Aa vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies.

(2) A vendor or an affiliate of the vendor that is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock.

(b) Vendor Certification. – The Secretary of Administration shall require each vendor submitting a bid or contract to certify that the vendor is not an ineligible vendor as set forth in subsection (a) of this section. Any person who submits a certification required by this subsection known to be false shall be guilty of a Class I felony.

(c) Definitions. – The following definitions apply in this section:

(1) ~~For the purpose of this section, the term "affiliate" has the meaning provided~~ Affiliate. – As defined in G.S. 105-163.010.

(2) Tax haven country. – Means each of the following: Barbados, Bermuda, British Virgin Islands, Cayman Islands, Commonwealth of the Bahamas, Cyprus, Gibraltar, Isle of Man, the Principality of Liechtenstein, the Principality of Monaco, and the Republic of the Seychelles."

SECTION 32. Article 6 of Chapter 147 is amended by adding a new section to read:

"**§ 147-69.4. Pension Assurance Fund established.**

(a) Fund Established. – There is established the Pension Assurance Fund in the Office of the State Treasurer that shall be used to provide a means to protect the retirement savings and investments of the citizens of North Carolina who are employed by private industry.

(b) Fund Earnings, Assets, and Balances. – The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall be the custodian of the Fund and shall invest its assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried forward in the Fund for the next succeeding fiscal year.

(c) Fund Purposes. – Moneys from the Fund may be used to compensate individuals who lose a significant portion of their retirement savings, through no fault of

their own, that are invested in 401k plans or other pension plans that are funded in whole or in part with the stock of their employer companies as the result of a violation of Chapter 78A of the General Statutes or a violation of the Securities Act of 1933 or the Securities Exchange Act of 1934. Payments from the Fund shall be made by the State Treasurer as provided by State law."

SECTION 33. The State Treasurer, in consultation with the Secretary of State, shall develop legislative recommendations regarding the best methods for funding the Pension Assurance Fund established by this act, including the use of punitive damages and treble damages awarded in actions involving securities fraud brought by the State or by private individuals, and the proper guidelines for the payment of claims from the Fund. The Legislative Research Commission may also study this issue. The State Treasurer and the Secretary of State shall report their recommendations to the General Assembly on or before March 1, 2003, and if the Legislative Research Commission authorizes a study of this issue, the State Treasurer shall also forward a copy of its report to that committee.

SECTION 34. G.S. 147-69.2(a) reads as rewritten:

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

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

SECTION 35. There is hereby appropriated to the Office of the Secretary of State for the 2002-2003 fiscal year the sum of one hundred fifty-one thousand one hundred twenty-five dollars ($151,125) for recurring expenses and fifteen thousand nine hundred ninety dollars ($15,990) for nonrecurring expenses for three additional unsworn securities investigators in the Securities Division.

SECTION 36. Sections 10, 11, 26, and 27 of this act become effective December 1, 2002, and apply to acts committed on or after that date. Sections 19, 20 and 22 of this act become effective November 1, 2002, and apply to fees assessed on or after that date. Sections 30 and 31 of this act become effective November 1, 2002, and apply to contracts entered into on or after that date. Section 35 of this act becomes effective November 1, 2002. The remainder of this act is effective when it becomes law.

SENATE BILL 1455:
Strengthen Securities Fraud Enforcement Laws.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Sen. Rand
Date:	October 2, 2002	**Summary by:**	O. Walker Reagan, Staff Attorney
Version:	Proposed House Committee Substitute S1455-CSRUf-121		

SUMMARY: ***The Proposed House Committee Substitute for Senate Bill 1455 would strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators.***

Additionally the bill would prohibit the State from contracting with businesses that have any officers or directors who have been convicted of securities fraud within the past 10 years, prohibit the State from contracting with vendors that are incorporated in a tax haven country after December 31, 2001 but the United States is the principal market for the public trading of their corporations stock, and create a pension assurance fund to protect the retirement savings and investments of the citizens of North Carolina.

This bill was referred to the Finance Committee in part because it increases fees in Sections 19, 20 and 22 to fund appropriations for three additional unsworn securities investigators in Section 35.

CURRENT LAW: Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions, whether or not the company is chartered in NC, and whether or not the security is registered in NC. Criminal violations of the securities fraud laws are punished as Class H felonies, regardless of the amount involved. In civil actions, the statute of limitations for securities fraud is two years and punitive damages are not allowed to be imposed.

BILL ANALYSIS:

Section 1 of the bill clarifies that the issuance of false or misleading securities analyses, reports or financial statements constitutes a deceptive or fraudulent manipulation of the market.

Sections 2, 4, and 21 correct an incorrect reference to GAAP (generally accepted accounting principles) accounting standards and allow the Securities Administrator to require audited financial statements, except when waived by the Administrator by rule or order.

Sections 3 and 18 amend the securities dealers and investment advisors registration laws to prevent the withdrawal of an application after investigation of a person's qualifications for registration has begun by the Securities Administrator. This will permit the Administrator to make an administrative determination that the person is not qualified for registration or is subject to revocation of registration which helps prevent a disqualified person from later registering or registering in another state.

Sections 5, 6 and 23 amend the civil damages remedies sections to authorize the recovery of punitive damages consistent with Chapter 1D of the General Statutes in addition to actual damages arising from securities fraud.

Section 7 specifies the civil liabilities for market manipulation in violation of G.S. 78A-12 and defines the measure of damages, including punitive damages.

Sections 8 and 24 conform and expand the liability of a person who controls another person who violates the Securities Act and the Investment Advisor Act and sets the standard as "in the exercise of reasonable care could have known."

Section 9 extends the civil statute of limitations under the securities law from two years after the date of the sale of the securities to three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three years from discovery.

Sections 10, 26 and 27 increase the punishment for criminal violations of the Securities Act, the Investment Act and the Commodities Act where total consideration lost totals $100,000 or more from a Class H felony to a Class C felony. This change makes the punishment for these types of white-collar crimes consistent with the punishment for other similar white-collar crimes including embezzlement and obtaining property by false pretenses.

Section 11, and the new G.S. 78C-39(a3) in Section 26, make it a Class H felony to willfully interfere with an investigation by the Securities Administrator, including the destruction of records. This statute is similar to the statute that makes it a crime to willfully interfere with an audit by the State Auditor that is punished as a Class 2 misdemeanor. (G.S. 147-64.7A).

Sections 12 and 13 correct the jurisdiction section of the Securities Act to subject unlawful manipulation of the markets under G.S. 78A-12 to sanctions under the Act.

Sections 15, 16 and 17 recodify an exception for registration as an investment advisor of a person registered under federal law.

Section 19 increases from $200 to $300 the filing fee for the initial or renewal registration of an investment adviser.

Section 20 increases from $200 to $300 the filing fee for the initial or renewal registration of an investment adviser covered under federal law.

Section 22 increases from $200 to $250 the annual renewal fee for renewing a registration statement relating to redeemable securities to be offered for a period in excess of one year, other than securities covered under federal law.

Section 25 amends the statute of limitations under the Investment Advisers Act to correspond to the changes made in Section 9 to the Securities Act. Here, the three-year statute of limitations from the date of the rendering of the investment advice in violation of the law would be replaced by a period of three years after the discovery of a violation, but in no event more than five years, except for liability arising from a fraudulent or deceitful act committed to induce a person to postpone bringing an action, in which case the statute of limitations shall be three years from discovery.

Section 28 adds investigations by the Securities Administrator to the list of circumstances when a governmental authority can get access to a customer's financial records held by a financial institution.

Section 29 amends a limited provision of the Administrative Procedures Act to authorize the Secretary of State to adopt temporary rules governing the conduct of administrative hearings.

Section 30 prohibits a vendor from entering into a contract with the State if any officer, director, or owner of the vendor has been convicted of a state or federal securities fraud violation within the 10 years immediately prior to the bid solicitation. This section requires vendors submitting a bid or contract to certify that none of its officers, directors, or owners has been convicted of any such violation. The submission of a false certification is a Class I felony. This section also provides that a contract with an ineligible vendor is void. However, the contract may continue in effect until an alternative can be arranged when (i) immediate termination would result in harm to the public health and welfare, and (ii) the Secretary of Administration approves the continuation. The requirements of this section do not impose a duty on any department, institution, or agency of the State government to investigate or verify the information contained in a vendor's certification.

Section 31 prohibits the Secretary of Administration from entering into a contract with a vendor or an affiliate of a vendor if the vendor or affiliate is incorporated in a tax haven country after December 31, 2001, but the United States is the principal market for the public trading of the corporation's stock. The vendor is required to certify, upon submitting a bid or contract, that it does not violate the provisions of this section. The definition of "tax haven country" is identical to the definition of the same term found in federal legislation currently before Congress that would prohibit the federal government from using defense-spending funds as payment on any new contracts with "corporate expatriates."

Sections 32, 33 and 34 provide for the creation of a Pension Assurance Fund in the Office of State Treasurer to protect the retirement savings and investments of employees in private industry who, through no fault of their own, have suffered significant losses due to securities fraud violations. This section directs the State Treasurer, in consultation with the Secretary of State, to develop legislative recommendations regarding the best methods for funding the Fund, including the use of punitive damages and treble damages awarded in actions involving securities fraud, and the proper guidelines for the payment of claims from the Fund. This section further provides that the Legislative Research Commission may study this issue and report its findings to the 2003 General Assembly.

Section 35 appropriates $151,125 for recurring expenses and $15, 990 for nonrecurring expenses for three additional unsworn securities investigators in the Secretary of State's Securities Division. The increase revenue arising from increases in the fees in Sections 19, 20 and 22 approximates the amount of this appropriation.

EFFECTIVE DATE: The criminal provisions of the bill become effective December 1, 2002. The appropriation section, the revenue sections, and the State contracting provisions are effective November 1, 2002. The remainder of the bill is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: September 30, 2002

TO: House Finance Committee

FROM: Marilyn Chism, Michele Nelson, Chloe Gossage, and Stanley Moore
Fiscal Research Division

RE: S1455-CSRUf-121 [v.5] PCS (Strengthen Securities Fraud Enforcement Laws)

FISCAL IMPACT

	Yes (X)	No ( )	No Estimate Available ( )		
	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
GENERAL FUND REVENUE					
Recurring	$271,000	$271,000	$271,000	$271,000	$271,000
EXPENDITURES					
Correction	Exact amount cannot be determined; some impact anticipated				
Judicial	Exact amount cannot be determined; impact anticipated				
Secretary of State					
Recurring	$ 151,125	$ 233,862	$ 241,349	$ 248,581	$ 256,038
Nonrecurring	$ 15,990				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; some impact anticipated				
POSITIONS:	3 positions in Secretary of State; unknown number in Correction				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch; Department of the Secretary of State; State Treasurer

EFFECTIVE DATE: Sections 10, 11, 25, and 26 become effective December 1, 2002. Sections 19, 20, 22, 30, 31 and 35 become effective November 1, 2002. The remainder of the act becomes effective when it becomes a law.

**This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.*

BILL SUMMARY: (Summary provided by the Research Division of the NC General Assembly.) Securities fraud committed in North Carolina by any person or any company is subject to both criminal and civil actions, whether or not the company is chartered in North Carolina, and whether or not the security is registered in North Carolina. Criminal violations of the securities fraud laws are punished as Class H felonies, regardless of the amount involved. In civil actions, the statute of limitations for securities fraud is two years and punitive damages are not allowed to be imposed. The Proposed House Committee Substitute for Senate Bill 1455 would strengthen various laws prohibiting fraud in securities transactions and dealings by increasing criminal punishment for large-scale securities fraud, expanding civil remedies to recover damages arising from securities fraud, strengthening administrative and criminal powers of securities administrators, and authorizing additional securities investigators.

Additionally, the bill would prohibit the State from contracting with businesses that have any officers or directors who have been convicted of securities fraud within the past 10 years, prohibit the State from contracting with vendors that are incorporated in a tax haven country after December 31, 2002 but the United States is the principal market for the public trading of their corporations stock, and create a pension assurance fund to protect the retirement savings and investments of the citizens of North Carolina.

ASSUMPTIONS AND METHODOLOGY:

Secretary of State

General Fund Revenue. Sections 19, 20 and 22 of this bill would increase certain fees that are now charged by the Securities Division of the Secretary of State. The estimated additional revenue is $271,000 annually.

Specifically, Sections 19 and 20 would amend G.S. 78C-17(b) and G.S. 78C-17(b1) to increase the annual registration and notice filing fees for investment and adviser firms from $200 to $300. This will affect approximately 1,100 firms, which equates to $110,000 in additional revenue annually.

Section 22 would amend G.S. 78A-31(a)(4) to increase the annual renewal fee for mutual company notice filings from $200 to $250. This will impact 3,220 mutual funds and is expected to generate an additional $161,000 annually.

General Fund Operating Budget. The Department estimates that the Securities Division would need three additional unsworn securities investigators at a pay grade of 71 with annual salary of $33,284.to investigate complaints and to significantly enhance the enforcement of the securities fraud provisions. The positions are effective November 1, 2002 with a cost the first year per investigator as follows:

Cost per Securities Investigator (Unsworn)

Recurring		**Nonrecurring**	
Salary	$22,189	Furniture/Equipment	$2,130
Benefits	$4,762	Computers	$3,200
Travel	$19,090		
Communication	$867		
Education/Other Expenses	$3,467		
Total Recurring	**$50,375**	**Total Nonrecurring**	**$5,330**

The total recurring cost for the three investigators is expected to be $151,125. The nonrecurring cost is expected to be $15,990. For the front-page box, recurring costs are adjusted for annual inflation.

Correction

To project the impact of a bill on the prison population, the Sentencing Commission uses data based on offense codes from the Administrative Office of the Courts (AOC).[1] Offenses that are infrequently charged or infrequently result in convictions are not assigned offense codes. Most

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on December 2001 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory board, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

violations of the statutes amended in this bill [G.S. 78A-8 through G.S. 78A-14, G.S. 78C-8(a)(1), G.S. 78C-8(a)(2), and G.S. 78C-8(b)] are not assigned offense codes. This is an indication that violations or convictions are relatively rare. Without offense codes and prior conviction rates, the Sentencing Commission cannot project the impact of this bill.

Sections 10 and 26 of the proposed legislation would increase the penalty for securities fraud (in the above statutes) from a Class H felony to a Class C felony in instances where the value of the consideration or losses was $100,000 or more. If, for example, there was one conviction reclassified from Class H to Class C, there would be the need for one additional prison bed in the first year and two additional prison beds in the second year, due to active sentences and probation revocations.

These sections would also increase the punishment for willful violation of G.S. 78A-9 or G.S. 78C-9 from a Class I felony to a Class H felony if the person violating the statute knows the statement made to be false or misleading. If, for example, there were five convictions reclassified from Class I to Class H, there would be the need for one additional prison bed in the first year and one additional prison bed in the second year.

Also included in these sections as new offenses, other willful violations of G.S. 78A-9 and G.S. 78C-9 are punishable as Class 2 misdemeanors. The Sentencing Commission does not have any historical data from which to estimate the potential impact of this proposal on the prison population. It is not known how many offenders might be sentenced for this offense. In FY 2000-01, 11.8 percent of Class 2 misdemeanor convictions resulted in active sentences. The average estimated time served was 19.1 days. Offenders serving active sentences of 90 days or less are housed in county jails; the Department of Correction (DOC) reimburses county jails for the cost of housing offenders serving active sentences of 30 to 90 days. Therefore, Class 2 misdemeanor convictions that result from the broadening of this statute are not expected to have a significant impact on the prison population.

Sections 11 and 26 also create new Class H felony offenses. The Sentencing Commission does not have historical data from which to estimate the potential impact of this proposal on the prison population. If, for example, there were three Class H felony convictions for these offenses per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year due to active sentences and probation revocations.

Section 27 of the bill amends G.S. 78D-24 to punish (upon conviction) any person who willfully violates any provision of Chapter 78D (Commodities Act) as a Class H felon if the actual losses caused by the violation are less than $100,000 and as a Class C felon if the actual losses caused by the violation are $100,000 or more. Under current law, such a person is punished as a Class I felon. Every five convictions reclassified from Class I to Class H would result in the need for one additional prison bed in the first year and one additional prison bed in the second year. If, for example, there was one conviction reclassified from Class I to Class C, there would be the need for one additional prison bed in the first year and two additional prison beds in the second year.

The chart below describes the impact of each new or amended criminal penalty on the prison system in the first year (2003-04). Please note that due to active sentences and probation

revocations, convictions of Class C felonies that lead to one new prison bed in 2003-04 will result in the need for two new prison beds in 2004-05. **If, for example, there was one violation of each of the statutes listed (with losses at least $100,000) – and each violation resulted in a conviction - there would be the need for 9 new prison beds in the first year and 19 new prison beds in the second year.** Each prison bed costs, on average, $23,831 to operate annually.

Increase in Number of Prison Beds in 2003-04 For Every Conviction

	Current Law	*Bed increase under SB 1455*	
Section/Statute violated	All losses	Losses less than $100,000	Losses at least $100,000
Section 10			
G.S. 78A-8	0.33	no change	+1 bed
G.S. 78A-11	0.33	no change	+1 bed
G.S. 78A-13	0.33	no change	+1 bed
G.S. 78A-14	0.33	no change	+1 bed
G.S. 78A-9 (false/misleading statements)	0.13	+ 0.20 beds	
G.S. 78A-9 (other)	-	+ jail time	
Section 11			
G.S. 78A-58	-	+ 0.33 beds	
Section 26			
G.S. 78C-8(a)(1)	0.33	no change	+1 bed
G.S. 78C-8(a)(2)	0.33	no change	+1 bed
G.S. 78C-8(b)	0.33	no change	+1 bed
G.S. 78C-9 (false/misleading statements)	0.13	+ 0.20 beds	
G.S. 78C-9 (other)	-	+ jail time	
Section 27			
G.S. 78D-24(a)	0.13	+ 0.20 beds	+1 bed
Section 30			
G.S. 143-59.2	-	+ 0.13 beds	
Section 31			
G.S. 143-59.1	-	+ 0.13 beds	

It is impossible to estimate the impact of the proposed legislation on the prison system, and available data indicate a range of possible results. Based on data from the AOC and the Securities Division of the Secretary of State's office, there is the potential for an increase in prison beds needed under SB 1455. AOC data indicates that as many as 55 convictions in calendar year 2000 might have been affected by the proposed legislation; AOC cannot determine the total number of convictions for these offenses or the proportion of convictions that would have been eligible for the higher felony class under this bill. Securities Division data indicates that only six individuals were charged – and might have been affected by the provisions in SB 1455 – in 2001. If there were no convictions under the affected statutes, there would be no impact on prison beds.

Based on the most recent population projections and estimated available prison bed capacity, there are no surplus prison beds available for the five year Fiscal Note horizon and beyond. This means

that any increase in Class C felony convictions will impact the need for new prison beds. Due to the December 2002 effective date and time it would take for an offender to be convicted and begin serving a prison sentence, the prisons would not see a significant impact from this bill until FY 2003-04. For each additional prison bed needed in that year, the average statewide operating cost is estimated to be $71.34/day.

Only operating costs of new prison beds, not construction costs, will be included in the fiscal estimate under the following circumstances: (1) when a bill increases the inmate population in the first two years of the fiscal note horizon, FY 2003 and 2004; this is based on the assumption that Correction cannot build prisons quickly enough to house additional offenders before 2004-05 and, (2) if the number of beds is anticipated to be less than 400 beds total since it is not practical to assume DOC would construct a general population prison with fewer than 400 beds.

In practice under these circumstances, DOC will have to take all or one of several actions: purchase additional beds out of state or in county jails; pay counties to increase jail backlog; or, establish temporary beds in the State system. For these circumstances, the Fiscal Research Division (FRD) will use the DOC statewide average operating cost, plus 3% annually, to calculate the prison bed cost.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) provides Fiscal Research with an analysis of the fiscal impact of the specific bill. For these bills, fiscal impact is typically based on the assumption that court time will increase due to an expected increase in trials and a corresponding increase in the hours of work for judges, clerks and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense. The AOC relies on offense code data to project the court costs of a bill; the lack of data for these offenses prevents the AOC from estimating the court impact. However, the AOC does expect SB 1455 to have an impact on the court system. Extending the length of time for filing a civil lawsuit would result in more such lawsuits being filed and the availability of punitive damages would increase the complexity, and thus workload, of existing and new cases.

The AOC anticipates that many sections of the bill could have a substantial fiscal impact on the courts because they create new offenses not currently charged and elevate offense classes for existing offenses. *Sections 11 and 26* of the bill create new Class H felony offenses for obstructing investigations under Chapter 78A (N.C. Securities Act) and 78C (Investment Advisers). *Sections 10 and 26* enhance the punishment from a Class H felony to a Class C felony for any person who willfully engages in certain fraudulent practices if the total value of the consideration involved or actual losses caused in the violation or violations is $100,000 or more. Similarly, *Section 27* enhances punishment from a Class I felony to a Class C felony if the actual losses caused in the violation or violations is $100,000 or more, and to a Class H felony if the actual losses caused in the violation or violations is less than $100,000. *Sections 10 and 26* also make it a Class H felony rather than a Class I felony for any person to willfully violate G.S. 78A-9 or G.S. 78C-9 by knowingly making false or misleading statements in any material respect. These sections also impose a Class 2 misdemeanor for any other willful violation of G.S. 78A-9 or G.S. 78C-9.

As a result of the enhanced penalties under the bill, some defendants charged with Class H or Class I felonies under current law would be charged with Class C or Class H felonies. Moreover, defendants charged with Class C felonies would serve active sentences under the bill. The Securities Division staff of the Department of the Secretary of State notes that defendants convicted of the Class H or Class I felonies now do not typically have the requisite number of prior record level points to ensure that they serve active sentences. With upgrades in the offenses charged (particularly the more significant upgrades from Class H or Class I felonies to Class C felonies), all defendants would face active sentences (all sentences in Class C are active). More vigorous defense and prosecution, and more time and cost disposing of cases would accompany such enhancement. Trials and pleas would demand more court time and preparation time as a result of the stiffer penalties under the bill.

In addition, the bill expands the definition of "Investment advisers" (*Section 17* of the bill) to include persons exempt from registration under federal law Section 203(b)(3) of the Investment Advisers Act of 1940. Section 203(b)(3) exempts certain investment advisers from registering in order to use mails or any other means of interstate commerce in connection with his or its business as and investment adviser. *Sections 15 and 16* of the bill further clarify that investment advisers exempt from registration under Section 203(b)(3) (or a representative of such a person) are allowed to transact business in the State as investment advisers or investment adviser representatives respectively. While it is possible that more investment advisers and their representatives could transact business in the State under the bill than before, conversations with Securities Division staff indicate that any such increase would be insignificant and impossible to quantify. According to the Securities Division staff, these changes would only move a small number of private investment advisers within the scope of the antifraud provisions in the State.

While the AOC expects these changes to affect the courts, it is unable to provide an estimate. Regarding the impact of the civil liability changes, the AOC expects increased complexity of civil cases and more civil lawsuits as a result of the inclusion of punitive damages and extension of the filing period. No securities cases have been assigned to the Business Court, which could suggest that the civil cases to date have not been so complex that assignment of those cases was warranted.

Regarding the criminal cases, the AOC also does not have offense codes for most of the offenses to which the bill would apply. Calendar year 2001 data, for the one offense for which there is presently an offense code (G.S. 78A-8), reveal no defendants charged with that particular offense. Available data for calendar year 2000 reveal 55 convictions under G.S. 78A-8. (These data come from a review of what the clerks entered into what is often referred to as "free text" fields. Since the clerks may enter anything, or nothing, into that field, the data reveal at best an order of magnitude. The 55 convictions are a significant number for this field.) AOC data do not reveal how many of those cases involved securities in excess of $100,000. If the crimes selected for prosecution often involve substantial securities, the $100,000 threshold may be crossed in the majority of cases. Enhancement from Class H to Class C felonies would translate into a substantial fiscal impact. These data, moreover, reflect convictions, not charges, and it may be assumed that the number of charges for this or similar offenses (to which G.S. 78A-8 could have been a plea) was significantly greater.

The Securities Division estimates that approximately 1,700 to 2,100 complaints are filed and investigated by their office each year. During calendar year 2001, only six arrests resulted from these investigated complaints. The Securities Division also estimates that 98 percent of the arrests resulting in criminal cases would be elevated to Class C felonies under the bill. According to the Securities Division, not many cases have arisen in the past because the cases are most often referred to individual district attorney's offices that may not have the necessary expertise or resources to prosecute these types of cases. As such, the Securities Division staff indicates that it is not unlikely for a district attorney to work out a plea agreement with a defendant before the defendant is charged or indicted. However, *Section 35* of the bill does appropriate funds to provide the necessary resources (three additional unsworn securities investigators) to the Department of the Secretary of State to investigate complaints. Therefore, there may be significant enforcement of the provisions of the bill and substantial increases in the workload of the courts. While all these data collectively suggest a significant number of cases, the AOC is unable to estimate a specific number.

Finally, *Sections 30 and 31* prohibit certain vendors from contracting with the State, and make false certification by unauthorized vendors a Class I felony. AOC staff reports that neither the Securities Unit in the Office of the Secretary of State nor the Purchasing and Contract Division of the Department of Administration (DOA) are aware of the number of vendors doing business with the State that have an officer, director, or owner of an unincorporated business entity, who within 10 years immediately prior to the date of the bid solicitation, has been convicted of securities violations under Chapter 78A or the Securities Act of 1933 or the Securities Exchange Act of 1934. Under Section 30 of the bill, these vendors are unauthorized to do business with the State. However, the bill does not impose a duty on State entities to investigate the vendor's information. While the DOA plans to make vendors aware of the new law, it does not intend to investigate the information supplied by vendors. To the extent that vendors are charged with providing false certification, the courts will be impacted.

Office of the State Treasurer

This act creates the Pension Assurance Fund in the Office of the State Treasurer to protect the retirement savings and investments by citizens of North Carolina. The purpose of the Fund is to compensate private citizens who lose a significant portion of their retirement saving that were invested in 401(k) plans or other pension plans that were funded in whole or in part with employer stock. The State Treasurer and the Secretary of State are to develop recommendations for funding; including the use of punitive damages and treble damages involving settlements of suits involving securities fraud brought by the State or by private individuals. The State Treasurer and the Secretary of State are to make their recommendations to the General Assembly by March 1, 2003.

Several question relating to this Fund are:

- Role of the Attorney General's office?
- How will citizens receive settlement funds?
- Why not include public employees?
- Are IRAs covered?
- Will payment be made to plan members or to plan sponsors?
- Staff to take claims and determine loss of citizens?

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of the Secretary of State.

TECHNICAL CONSIDERATIONS: None.

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee is/are presented:
By Representatives Allen, Buchanan, Luebke and Wainwright (Chairs) for the Committee on **FINANCE.**

The following bills are reported with an indefinite postponement report:

BILL NO.	SHORT TITLE	SPONSORS
H8	REPEAL GIFT TAX.	Lyons Gray
H11	RAISE HOMESTEAD EXEMPTION INCOME LIMIT.	Wilma M. Sherrill
H44	MODIFY INTANGIBLES REIMBURSEMENT.	Lanier M. Cansler
H50	LOCAL OPTION HOMESTEAD EXEMPTION.	John M. Rayfield
H53	EXEMPT CHILD CARE PROPERTY.	Verla C. Insko
H58	EXEMPT TOBACCO PAYMENTS FROM INCOME TAX.	Rex L. Baker
H61	INCREASE INTANGIBLES REIMBURSEMENT.	W. Franklin Mitchell
H68	DESERT STORM LICENSE PLATE.	R. Eugene Rogers
H73	DESERT STORM LICENSE PLATE.	Mia Morris
H99	LOCAL TAX MENU WITH VOTER APPROVAL.	Henry M. Michaux, Jr., R. Phillip Ha
H101	NONPROFIT SALES TAX REVISION.	Rex L. Baker
H102	PROPERTY TAX HOMESTEAD EXCLUSION.	Dewey L. Hill
H107	MOTORCYCLE SAFETY ACT.	Rex L. Baker
H111	GOVERNMENT SALES TAX EXEMPTION.	Gordon P. Allen
H124	PASS-THROUGH ENTITY/HOUSING TAX CREDIT.	Verla C. Insko
H145	TROUTMAN/CATAWBA SATELLITE ANNEXATIONS.	Mitchell S. Setzer
H166	NO GIFT TAX ON FAMILY FARMS.	J. Russell Capps
H180	EXPAND DEVELOPMENT ZONES.	E. Nelson Cole
H184	MAKE CAR TAX PROGRESSIVE.	Zeno L. Edwards, Jr.
H191	SELF-EMPLOYED DEDUCT HEALTH INS.	John W. Hurley, G. Wayne Goodwi
H220	U.S. NAVY SUBMARINER SPECIALTY PLATE.	Rick L. Eddins
H227	WORLD WAR II SPECIAL LICENSE PLATE.	W. B. Teague, Jr.
H276	ESTATE TAX ON MULTI-STATE PROPERTY.	R. Phillip Haire
H279	MODIFY DARE TRANSFER TAX.	William T. Culpepper, III
H281	19TH HOUSE DISTRICT LOCAL ACT-1.	Donald S. Davis
H312	NO SALES TAX ON FUNERALS.	John M. Rayfield
H323	CITY OF GREENSBORO LOCAL ACT 2.	Mary L. Jarrell
H364	PEMBROKE SATELLITE ANNEXATIONS.	Ronnie N. Sutton
H366	ARTWORK CONSERVATION FEES.	Daniel W. Barefoot
H379	BILL LEE ACT CHANGES.	William C. Owens, Jr.
H411	TAX CREDITS FOR GLEANING/DONATION OF PRODUCE.	Dewey L. Hill
H416	CREDIT FOR VALUE-ADDED AGRI BUSINESS.	Dewey L. Hill
H424	DCR ADMISSION FEES.	Alma S. Adams
H433	CONFORM PERSONAL TAX DEDUCT. AND EXEMPT TO IRC.	John M. Blust
H455	SHP REIMBURSEMENT FOR SPECIAL EVENTS.	W. Eugene McCombs
H489	SWIFT CREEK INCORPORATION.	Robert J. Hensley, Jr.
H513	EXPAND BANK DEDUCTION TO ALL.	Charles F. Buchanan
H552	OPTIONAL TWO YEAR LICENSE PLATES.	Cary D. Allred

H554	U.S. MILITARY VETERAN SPECIAL REG. PLATE.	Cary D. Allred
H572	TAX CITIZENS LIKE BUSINESS/WHITE GOODS.	Paul Luebke
H637	MODIFY FUEL TAX FORMULA.	James W. Crawford, Jr.
H711	TEACHER TAX CREDIT.	Gene G. Arnold
H751	PHARMACY TECHNICIANS.	Gordon P. Allen
H756	WASHINGTON TRANSFER TAX CHANGE.	R. Eugene Rogers
H773	MILLERS CREEK INCORPORATED.	R. Tracy Walker
H789	"FIRST IN FURNITURE" SPECIAL LICENSE PLATE.	Edgar V. Starnes
H795	"CHOOSE LIFE" LICENSE PLATE.	Mitch Gillespie
H796	FARM BALING EQUIPMENT TAX CHANGE.	Edd Nye
H832	DIETETICS/NUTRITION PRACTICE ACT.	Mary L. Jarrell
H836	DURHAM ZONING/CAPITAL FACILITIES FEES.	Paul Miller
H845	EXCLUDE PENSIONS FROM INCOME TAX.	Donald S. Davis
H848	INCOME TAX HEALTH CREDIT.	Gene G. Arnold
H850	CHARLOTTE ENTERTAINMENT TAX.	W. Edwin McMahan
H874	LAURINBURG OCCUPANCY TAX.	Douglas Y. Yongue
H878	BUNCOMBE ANNEXATION REFERENDUM.	Trudi Walend
H916	HOMESTEAD EXEMPTION INCREASE.	Fern Shubert
H926	MODIFY NEW HANOVER ROOM TAX USE.	Daniel F. McComas
H930	SAMPSON/CLINTON ROOM TAXES.	Larry Bell
H959	SALES TAX ON CERTAIN ELECTRICITY.	Lyons Gray
H975	NO SALES TAX ON FREE PUBLICATIONS.	Martin L. Nesbitt, Jr., Daniel T. Blue Mia Morris
H992	HOMEBUILDER RESPONSIBILITY.	Beverly M. Earle
H1014	CERTIFIED PROFESSIONAL MIDWIVES.	Mia Morris
H1057	LABOR COMMISSIONER FEE AUTHORITY.	W. Franklin Mitchell
H1059	RETURNABLE PALLETS TAX EQUALIZATION.	Pryor A. Gibson, III
H1064	SOME ELECTRICITY TAX EXEMPT.	Pryor A. Gibson, III
H1066	BROADBAND INTERNET TAX CREDIT.	Joe P. Tolson, Drew P. Saunders, Russell E. Tucker
H1086	ANIMAL WASTE OPERATORS' LATE FEE.	Russell E. Tucker
H1106	ENACT MORTGAGE LENDING ACT.	Walter G. Church, Sr.
H1110	NORTH CAROLINA TOURISM DEVELOPMENT ACT.	Beverly M. Earle, Daniel W. Barefoc R. Eugene Rogers
H1121	COASTAL RECREATIONAL FISHING LICENSE.	E. David Redwine, Pryor A. Gibson,
H1135	BLUE RIDGE PARKWAY FOUNDATION LICENSE PLATE.	Trudi Walend
H1176	ELECTRONIC PROPERTY TAX LISTING.	David M. Miner
H1181	EXPAND CALL CENTERS ELIGIBLE FOR BILL LEE ACT.	P. Wayne Sexton, Sr., E. Nelson Cc
H1292	TAXPAYER BILL OF RIGHTS.	John M. Blust
H1298	INCREASE COMMERCIAL UST FEES.	Pryor A. Gibson, III
H1302	LUST/EXTEND SUNSET/INCREASE TANK FEES.	Pryor A. Gibson, III
H1379	INCOME TAX THROWBACK RULE.	Verla C. Insko, Paul Luebke
H1383	HOUSING FINANCE AGENCY BONDS.	Gordon P. Allen
H1384	HFA BONDS.	Gordon P. Allen
H1396	FEES FOR CORPORATE CERTIFICATE OF EXISTENCE.	Henry M. Michaux, Jr.
H1409	VIDEO POKER REG. & ENFORCEMENT FEE.	G. Wayne Goodwin, Philip A. Badd
H1411	TAX INCENTIVES FOR ALTERNATIVE FUEL VEHICLES.	Joe P. Tolson
H1417	EARNED INCOME TAX CREDIT/INCREASE UPPER RATES.	Verla C. Insko, Paul Luebke
H1422	BACK-TO-SCHOOL SALES TAX HOLIDAY.	Flossie Boyd-McIntyre
H1423	SPEECH PATHOLOGISTS/AUDIOLOGISTS FEES.	Edd Nye

H1425	TECHNOLOGICAL DEVELOPMENT TAX CREDIT.	Gordon P. Allen
H1428	LOCAL OPTION TRANSFER TAX.	Paul Luebke
H1429	SUPPORT EDUCATION/NEW UPPER-INCOME TAX BRACKET.	Paul Luebke
H1432	ADDITIONAL TRANSIT AUTHORITY REGISTRATION TAX.	Verla C. Insko
H1433	REDUCE WHOLESALE DRUG DISTRIBUTOR LICENSE FEE.	Walter G. Church, Sr.
H1434	BILL LEE TIER DESIGNATION CHANGE-1.	Trudi Walend
H1435	BILL LEE TIER DESIGNATION CHANGE-2.	Trudi Walend
H1436	CCRC LEASED PROPERTY.	Art Pope
H1438	EXEMPT CERTAIN MILITARY PAY FROM INCOME TAX.	Alex Warner
H1440	REFORM BILL LEE ACT - 1.	Paul Luebke
H1442	REVISE CIGARETTE MANUFACTURER CREDIT.	Paul Luebke
H1444	EXPAND CHILD HEALTH INSURANCE.	Paul Luebke
H1446	ELIMINATE VEHICLE PROPERTY TAX.	Cary D. Allred
H1450	NO TAX ON HOMES/EQUAL SCHOOL FUNDING.	J. Sam Ellis
H1506	GROCERY STORE CREDIT - DEVELOPMENT ZONE.	Thomas E. Wright
H1507	CIGARETTE TAX FOR PUBLIC EDUCATION.	Robert J. Hensley, Jr.
H1509	REVENUE CHANGES/EXEMPT UNC TRUST PROPERTY.	L. Hugh Holliman, Paul Luebke, William L. Wainwright
H1528	REPEAL SALES TAX ON FERTILIZER AND SEED.	Cary D. Allred
H1531	CIGARETTE TAX FOR PUBLIC SCHOOLS.	Paul Miller
H1535	BUTNER TAX RATE.	James W. Crawford, Jr.
H1536	IRC UPDATE.	Art Pope, Gene G. Arnold, Lyons G Fern Shubert
H1547	CIGARETTE TAX $1 A PACK.	Henry M. Michaux, Jr.
H1548	APPLY SALES TAX TO CERTAIN VEHICLES.	Henry M. Michaux, Jr.
H1549	EITC/SALES TAX ON MACHINERY.	Henry M. Michaux, Jr.
H1550	REPEAL CIGARETTE EXPORT TAX CREDIT.	Henry M. Michaux, Jr.
H1551	CONFORM TAX ON BANKS.	Henry M. Michaux, Jr.
H1554	CASINO NIGHTS FOR NONPROFITS.	William C. Owens, Jr.
H1563	HAZARDOUS WASTE GENERATOR FEE INCREASE.	Joe Hackney
H1571	ANSON LOCAL SALES TAX FOR MEDICAID.	Pryor A. Gibson, III
H1591	MENTAL HEALTH REVENUE.	Mark F. Crawford
H1592	MEDICAID SUPPLEMENT ACT.	Mark F. Crawford
H1596	FIREFIGHTER/RESCUE SQUAD TAX DEDUCTION.	Mark Hilton
H1601	CIGARETTE TAX 50 CENTS A PACK.	Ruth M. Easterling
H1603	IRC UPDATE.	Paul Luebke, Gordon P. Allen, William L. Wainwright
H1606	RAISE ALCOHOL/CIGARETTE REV. TO SAVE SERVICES.	Verla C. Insko, Jennifer Weiss, Pau
H1630	NASCAR DRIVER THEME SPECIAL PLATES.	Andrew T. Dedmon, G. Wayne Goo
H1631	HMONG VETERANS LICENSE PLATE.	Bobby H. Barbee, Sr., Pryor A. Gibs
H1632	SALES TAX CHANGES/MEDICAID.	Russell E. Tucker
H1642	CONFORM TAX RATE ON CERTAIN VEHICLES.	Jennifer Weiss, Paul Luebke, Verla
H1643	CLOSE BANK TAX LOOPHOLE TO SAVE EDUCATION.	Jennifer Weiss, Verla C. Insko, Pau
H1644	INCOME SURTAX TO SAVE EDUCATION AND SERVICES.	Paul Luebke, Verla C. Insko, Jennif
H1645	CLOSE CORPORATE LOOPHOLES TO SAVE EDUCATION.	Paul Luebke, Jennifer Weiss, Verla
H1656	TEMP. REVENUE INCREASE TO PROTECT CHILDREN.	Henry M. Michaux, Jr.
H1669	SUNSET HARBOR INCORPORATED.	E. David Redwine
H1687	ARCHDALE OCCUPANCY TAX.	Jerry C. Dockham
H1693	EITC/SALES TAX ON FOOD.	Pryor A. Gibson, III
H1694	CLOSE CORPORATE TAX LOOPHOLES.	Paul Miller

H1717	SALES TAX ON CONSTRUCTION MATERIALS.	James W. Crawford, Jr.
H1718	AUTHORIZE INTERSTATE ABC SHIPMENT.	Michael Harrington
H1725	PITTSBORO DEANNEXATION.	Joe Hackney
H1729	ALLOW DIRECT ABC SHIPMENT.	Michael Harrington
H1732	GREENSBORO VEHICLE TAX.	Alma S. Adams
H1737	GOVERNOR'S EFFICIENCY STUDY COMMISSION.	William C. Owens, Jr.
H1753	BILL LEE ACT CHANGES.	Paul Luebke
H1754	LIQUOR TAX/FUNDS FOR MEDICAID DRUG COPAYMENT.	Paul Miller
H1761	FINANCING PARKS, RECREATION, AND HERITAGE.	Pryor A. Gibson, III, Joe Hackney, Gordon P. Allen, Daniel F. McComa
H1762	ENFORCE MASTER SETTLEMENT AGREEMENT.	E. Nelson Cole

Submitted by the Chairs of the House Committee on Finance on October ___, 2002.

Representative Gordon Allen

Representative Monroe Buchanan

Representative Paul Luebke

Representative William Wainwright

2002

HOUSE FINANCE

MINUTES

MINUTES
HOUSE COMMITTEE ON FINANCE

October 3, 2002

The House Committee on Finance met on Thursday, October 3, 2002, at 8:30 A.M. in Room 544 of the Legislative Office Building.

Representative Paul Luebke, Presiding Chair, called the meeting to order and the following members were present: Representatives Gordon Allen and Monroe Buchanan, Chairs; Representatives Dewey Hill and Mary Jarrell, Vice Chairs; Representatives Leslie Cox, Pete Cunningham, Michael Decker, Zeno Edwards, Pryor Gibson, Lyons Gray, Hugh Holliman, Bill Hurley, Eugene McCombs, Edwin McMahan, John Rayfield, Jennifer Weiss, Constance Wilson, and Larry Womble. Staff members present were Cindy Avrette, Trina Griffin, Mary Shuping, and Richard Bostic.

Sergeant-at-Arms serving the committee were Bob Fowler, Dusty Rhodes, Ann Lassiter, and James Worth.

SENATE BILL 1281, A BILL TO BE ENTITLED AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING THE REAL ESTATE COMMISSION; TO AUTHORIZE THE BOARD OF LANDSCAPE ARCHITECTS TO RETAIN PRIVATE COUNSEL; AND TO REQUIRE PROFESSIONAL EMPLOYER ORGANIZATIONS TO REGISTER WITH THE DEPARTMENT OF INSURANCE, was before the committee for discussion.

Senator Tony Rand, bill sponsor, said that this bill was requested by licensing boards. He said that this was a regulatory bill, not a licensing bill. It made various changes to the laws governing occupational licensing boards. The bill authorized licensing boards to buy commercial insurance to cover all risks or liability, including the boards' liability for tort claims and defense of their employees. It authorized the Real Estate Commission to acquire and deal with real property, copyright its written materials, clarify the law on real estate exam scores, and gave the Board flexibility in disciplinary matters. The bill also authorized the Board of Landscape Architects to hire private counsel and added a requirement that Professional Employment Organizations (PEO's) doing business in the State register with the Department of Insurance.

Rep. Womble asked if the PEO's have to register, what liability would a person have for hiring a PEO who has committed an immoral or illegal act, would the person who was injured have a claim against the PEO or the employer, and what position did the Insurance Department or any other departments take on the bill.

Bill Hale, Insurance Department, said the Insurance Department supported the legislation.

Rep. Edwards said this was how HMO's started and assumed that the laws on the books that applied to HMO's could eventually be applied to the PEO's.

Rep. Rayfield asked about any clause or insurance that would protect employees from bad decisions of the employer or the PEO's.

Rep. Hill spoke in support of the bill, especially the PEO part, and moved for a favorable report.

Rep. Hurley supported the bill, but asked why the Real Estate Commission should own property.

Vote was taken on the bill and it was given a favorable report.

Rep. Allen said that this was possibly the last meeting of the 2001-2002 House Finance Committee and he recognized Rep. Mary Jarrell, Vice-Chairman of the Committee, saying that she was extremely knowledgeable about the tax laws of North Carolina and had served the committee well. We are indebted to her for her great service to the State of North Carolina and to the work of the Finance Committee and she would be greatly missed.

Other members not returning are Rep. Hurley, Rep. Buchanan, Rep. Edwards, Rep. Willingham, Rep. Gray, and Rep. Pope and they were recognized for their hard work on the committee.

Chairman Luebke extended thanks to the legislative assistants who served the committee this session, the staff members, the sergeant-at-arms staff, and to the co-chairs of the committee. He also said that it had been his honor and pleasure to co-chair the committee.

There being no further business, the Chair adjourned the meeting at 9:50 A.M.

Respectfully submitted,

Representative Paul Luebke
Presiding Chair

Joyce T. Harris
Committee Assistant

ATTACHMENTS:
Committee Report
S. B. 1281
Bill Analysis for S.B. 1281

2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:
By Representative(s) **Allen, Buchanan, Luebke & Wainwright** (Chair/Chairs) for the Committee on **FINANCE**.

☒ Committee Substitute for
S.B. 1281 A BILL TO BE ENTITLED AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING THE REAL ESTATE COMMISSION; TO AUTHORIZE THE BOARD OF LANDSCAPE ARCHITECTS TO RETAIN PRIVATE COUNSEL; AND TO REQUIRE PROFESSIONAL EMPLOYER ORGANIZATIONS TO REGISTER WITH THE DEPARTMENT OF INSURANCE.

☒ 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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 1281

Judiciary I Committee Substitute Adopted 8/27/02
Finance Committee Substitute Adopted 9/25/02
Finance Committee Substitute #2 Adopted 9/26/02

Short Title: Certain Occupational Licensing Board Changes. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING THE REAL ESTATE COMMISSION; TO AUTHORIZE THE BOARD OF LANDSCAPE ARCHITECTS TO RETAIN PRIVATE COUNSEL; AND TO REQUIRE PROFESSIONAL EMPLOYER ORGANIZATIONS TO REGISTER WITH THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B is amended by adding the following new section to read:

"**§ 93B-16. Occupational board liability for negligent acts.**

(a) An occupational licensing board may purchase commercial insurance of any kind to cover all risks or potential liability of the board, its members, officers, employees, and agents, including the board's liability under Articles 31 and 31A of Chapter 143 of the General Statutes.

(b) Occupational licensing boards shall be deemed State agencies for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and employees of occupational licensing boards shall be considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent an occupational licensing board purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars ($150,000) per claim for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply. To the extent that an occupational licensing board purchases commercial insurance coverage for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-300.6(c) shall not apply.

(c) The purchase of insurance by an occupational licensing board under this section shall not be construed to waive sovereign immunity or any other defense available to the board, its members, officers, employees, or agents in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by an occupational licensing board shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of board members, officers, employees, or agents to defense by the State as provided by G.S. 143-300.3."

SECTION 2. G.S. 143-300.2(4) reads as rewritten:

"(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community ~~colleges and~~colleges, technical ~~colleges~~ colleges, and occupational licensing boards regulated by Chapter 93B of the General Statutes shall be deemed State agencies for purposes of this Article."

SECTION 3. G.S. 93A-3(f) reads as rewritten:

"(f) The Commission is authorized to ~~expend expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting~~ acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate ~~brokerage~~ business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs."

SECTION 4. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesperson shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesperson shall be at least 18 years of age. Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the

Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 60 hours of classroom instruction in subjects determined by the Commission, which shall be in addition to the course required for a real estate salesperson license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker or real estate salesperson shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesperson shall be required to take an oral or written examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker or real estate salesperson in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than

five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. ~~All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee.~~ The fee for reinstatement of an expired license shall be fifty-five dollars ($55.00). In the event a licensee fails to obtain a reinstatement of such license within ~~12~~ six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

SECTION 5. G.S. 93A-6 is amended by adding a new subsection to read:

"(f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision."

SECTION 6. G.S. 114-4.2G is repealed.

SECTION 7. G.S. 89A-3.1 reads as rewritten:

"§ 89A-3.1. Board's powers and duties.

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt rules to administer and enforce the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.

(4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.
(5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.
(6) Establish and approve continuing education requirements for persons registered under this Chapter.
(7) Receive and investigate complaints from members of the public.
(8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.
(9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.
(10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.
(11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
(12) Adopt and publish a code of professional conduct for all registrants.
(13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board.
(14) Retain private counsel subject to G.S. 114-2.3."

SECTION 8. Chapter 58 of the General Statutes is amended by adding the following new Article to read:

"Article 89.
"North Carolina Professional Employer Organization Act.

"**§ 58-89-1. Title.**

This Article shall be known and may be cited as the "North Carolina Professional Employer Organization Act".

"**§ 58-89-5. Definitions.**

In this Article:

(1) "Applicant" means a person applying for a registration under this Article.
(2) "Control", including the terms "controlling", "controlled by", and "under common control with", has the same meaning as in G.S. 58-19-5(2).
(3) "Managed services" means services provided by an organization that is the sole employer of employees whom it supplies to staff and to manage a specific portion of a company's workforce or a specific facility within a company on an ongoing basis. The managed services organization has responsibility for ensuring the capabilities and skills of the employees it supplies or provides, for all employer functions, for supervisory responsibility over the employees, and for management accountability of the facility or function.
(4) "Person" has the same meaning as in G.S. 58-1-5(9).

(5) "Personnel placement services" means a service that offers job placement services in which the personnel placement service organization assists persons interested in finding a job with companies that are seeking employees. Companies that hire persons through a personnel placement service are the sole employers of the persons hired, and the personnel placement service does not have any responsibility as an employer.

(6) "Professional employer organization" means a person that offers professional employer services and includes "staff leasing services companies", "employee leasing companies", "staff leasing companies", and "administrative employers" who offer or propose to offer professional employer services in this State.

(7) "Professional employer organization group" means a combination of professional employer organizations that operates under a group registration issued under this Article.

(8) "Professional employer services" means an arrangement by which employees of a registrant are assigned to work at a client company and in which employment responsibilities are in fact shared by the registrant and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the workforce at a client company work site or a majority of the personnel of a specialized group within that workforce consists of assigned employees of the registrant. "Professional employer services" does not include services that provide temporary employees or independent contractors, personnel placement services, managed services, payroll services that do not involve employee staffing or leasing, or similar groups that do not meet the requirements of this subdivision.

(9) "Temporary employees" means persons employed under an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client's workforce in a special work situation, including:

a. An employee absence;
b. A temporary skill shortage;
c. A seasonal workload; or
d. A special assignment or project.

"**§ 58-89-10. Rules.**

(a) The Commissioner may adopt rules necessary to implement, administer, and enforce the provisions of this Article.

(b) Each registrant is subject to this Article and to the rules adopted by the Commissioner.

(c) Nothing in this Article preempts the existing statutory or rule-making authority of any other State agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that State agency or entity.

"**§ 58-89-15. Registration required; professional employer organization groups.**

(a) No person shall engage in or offer professional employer services in this State unless the person is registered with the Department of Insurance under this Article.

(b) Two or more professional employer organizations that are controlled by the same ultimate parent, entity, or persons may be registered as a professional employer organization group. A professional employer organization group may satisfy the requirements of this Article on a consolidated basis.

(c) An applicant for an initial professional employer organization registration shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner accompanied by the registration fee. No application is complete until the Commissioner has received all required information.

(d) The registration application shall, at a minimum, be comprised of all of the following information:

(1) The name, organizational structure, and date of organization of the applicant, the addresses of the principal office and all offices in this State, the name of the contact person, and the taxpayer or employer identification number.

(2) A list by jurisdiction of each name under which the applicant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities. The list required by this subdivision shall include the parent company name and any trade name, trademark, or service mark of the applicant.

(3) A list of all officers and controlling persons of the applicant, their biographical information, including their management background, and an affidavit from each attesting to his or her good moral character and management competence.

(4) The location of the business records of the applicant.

(5) Evidence that the applicant has paid all of its obligations for payroll-related taxes, workers' compensation insurance, and employee benefits. All disputed amounts shall be disclosed in the application.

(6) Any other information the Commissioner deems necessary.

(e) An application for registration of a professional employer organization group shall contain the information required by this section for each member of the group.

(f) If the Commissioner finds that the applicant has not fully met the requirements for registration, the Commissioner shall refuse to register the applicant and shall notify the applicant in writing of the denial, stating the grounds for the denial. Within 30 days after service of the notification, the applicant may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

"**§ 58-89-20. Fees.**

(a) Each applicant for registration shall pay to the Commissioner, before the issuance of the registration, a nonrefundable application fee of two hundred fifty dollars ($250.00).

(b) Fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25.

"**§ 58-89-25. Prohibited acts.**

No person shall do any of the following:

(1) Engage in or offer professional employer services without being registered under this Article as a professional employer organization.

(2) Use the name or title "staff leasing company", "employee leasing company", "registered staff leasing company", "staff leasing services company", "professional employer organization", or "administrative employer" or otherwise represent that the person is registered under this Article unless the person is registered under this Article.

(3) Represent as the person's own the license of another person or represent that a person is registered if the person is not registered.

(4) Give materially false or forged evidence to the Commissioner in connection with obtaining a registration.

"**§ 58-89-30. Criminal penalty.**

A person who violates G.S. 58-89-25 commits a Class H felony. Any officer or controlling person who willfully violates any provision of this Article may be subject to any and all criminal penalties available under State law."

SECTION 9. The Department of Insurance shall report to the 2005 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 8 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

SECTION 10. Notwithstanding G.S. 58-89-30, each professional employer organization operating within this State as of January 1, 2003, shall complete its initial registration not later than 180 days after January 1, 2003. Each professional employer organization not operating within this State as of January 1, 2003, shall complete its initial registration prior to commencement of operations within this State.

SECTION 11. Sections 8 through 10 of this act become effective January 1, 2003, and apply to any contracts entered into, any business conducted, and any actions taken on or after that date. The remainder of this act becomes effective October 1, 2002.

SENATE BILL 1281:
Certain Occupational Licensing Board Changes.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Rand
Date:	October 3, 2002	**Summary by:**	Mary Shuping
Version:	4th Edition		Research Assistant

SUMMARY: ***Senate Bill 1281 makes various changes to the laws governing occupational licensing boards. Specifically, the bill would authorize all occupational licensing boards to purchase commercial insurance to cover all risks or liability, including the boards' liability for tort claims and defense of their employees. The bill authorizes the NC Real Estate Commission to acquire and deal with real property, copyright its written materials, clarify the law on real estate exam scores, and give the Board flexibility in disciplinary matters. The bill authorizes the Board of Landscape Architects to hire private counsel. Finally, the bill adds a requirement that Professional Employment Organizations (PEO's) doing business in the State register with the Department of Insurance.***

CURRENT LAW & BILL ANALYSIS:

Sections 1 & 2: Occupational Licensing Boards' Insurance. Under current law, the authority of licensing boards to purchase commercial insurance to cover risks is not clear and not uniform. While licensing boards are subject to paying negligence claims under the Tort Claims Act and are required to defend their employees from liability, claims of up to $500,000 may have to be paid out of excess funds of the boards. Some occupational licensing boards' annual budgets are less than this amount.

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Sections 3-5: Real Estate Commission Changes.

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Section 4 would amend the Real Estate Commission's law to clarify that public record status of exam scores of applicants for licenses as real estate brokers or salespersons. A person who fails the exam would be entitled to know the exam score, but a person who passes would only be notified that the person passed. Scores would not be considered public records; however, whether a person has passed or failed a licensing exam is a matter of public record.

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Section 5 gives the Commission additional flexibility regarding disciplinary matters. Under this subsection, the Commission would be able to impose reasonable conditions or limitations upon the license, registration, or approval issued.

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Sections 8-10: Professional Employer Organizations (PEO) Registration. Sections 8-10 require that "professional employer organizations" register with the Department of Insurance before doing business in North Carolina.

Background
The PEO industry is relatively new and is also known as the "employee leasing industry." A PEO establishes a contractual relationship with a client company. Under the contract, a co-employment relationship is created between the company, the PEO, and the workers of the company. The PEO becomes the employer of the company's employees and assumes the obligations related to human resources, workers' compensation, payroll, labor law compliance, employment taxes, and employee benefits. The client company maintains responsibility for the day-to-day management of employees and workplace supervision as well as all "hire and fire" decisions and promotions. Currently in North Carolina, general contract law and general employment law cover leased employment arrangements, but there is no law specifically covering the PEO industry.

Bill Analysis
A "professional employer organization" is defined as a person offering "professional employer services." "Professional employer services" are "arrangements by which employees of a registrant are assigned to work at a client company and in which employment responsibilities are shared by the registrant and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal, and a majority of the workforce of a client company ... consists of assigned employees of the registrant." Employee leasing services do not include services that provide temporary employees or independent contractors, personnel placement services, managed services, payroll services that do not involve employee staffing or leasing, or similar groups. The bill requires that all PEO's register with the Department of Insurance and provide certain information. The fee to register is $250.00. This bill does not contain a requirement for annual renewal of registration. Prohibited acts include offering employee leasing services, or using certain titles without being registered; misrepresenting the person's licensure status; or giving materially false or forged evidence to the Department in connection with obtaining a registration. Any person who commits a prohibited act is guilty of a class H felony. The bill also requires the Department to report to the 2005 Session on the implementation and enforcement of the registration. The registration requirements are effective January 1, 2003; however, PEO's currently

operating in the State have up to 180 days to become registered. PEO's not operating in this State on January 1, 2003 must register prior to doing business in the State.

EFFECTIVE DATE: The sections regarding PEO's become effective January 1, 2003 and apply to contracts entered into, any business conducted, and any actions taken on or after that date. The remainder of this act becomes effective October 1, 2002.

Walker Reagan, Staff Attorney, Research Division, contributed substantially to this summary.

10/3/02

Allen Vance

(Revised 6-02)

ROLL CALL VOTE

____ ____ = ____(TOTAL) HB# ____
YES NO SB# ____

HOUSE STANDING COMMITTEE ON
FINANCE

House Subcommittee on _____

MEMBER (last name)	YES	NO	MEMBER (last name)	YES	NO
Alexander			Wainwright		
Allen	✓		Weiss	✓	
Blust			Willingham		
Buchanan	✓		Wilson	✓	
Capps			Womble	✓	
Cox	✓				
Decker					
Dedmon					
Eddins					
Edwards	✓				
Gibson	✓				
Gray	✓				
Hackney (Speaker Pro Tem)					
Hill					
Holliman	✓				
Hurley	✓				
Jarrell					
Johnson					
Luebke	✓				
McComas					
McCombs	✓				
McMahan	✓		Ex officio Members		
Morris			Majority Leader Baddour		
Pope			Majority Whip Earle		
Rayfield	✓		Majority Whip Cunningham		
Starnes					

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

S 4

SENATE BILL 1281

Judiciary I Committee Substitute Adopted 8/27/02
Finance Committee Substitute Adopted 9/25/02
Finance Committee Substitute #2 Adopted 9/26/02

Short Title: Certain Occupational Licensing Board Changes. (Public)

Sponsors:

Referred to:

June 10, 2002

A BILL TO BE ENTITLED

AN ACT TO CLARIFY TORT CLAIM AND DUTY TO DEFEND EMPLOYEES LIABILITY OF OCCUPATIONAL LICENSING BOARDS; TO MAKE VARIOUS CHANGES TO THE STATUTES GOVERNING THE REAL ESTATE COMMISSION; TO AUTHORIZE THE BOARD OF LANDSCAPE ARCHITECTS TO RETAIN PRIVATE COUNSEL; AND TO REQUIRE PROFESSIONAL EMPLOYER ORGANIZATIONS TO REGISTER WITH THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 93B is amended by adding the following new section to read:

"**§ 93B-16. Occupational board liability for negligent acts.**

(a) An occupational licensing board may purchase commercial insurance of any kind to cover all risks or potential liability of the board, its members, officers, employees, and agents, including the board's liability under Articles 31 and 31A of Chapter 143 of the General Statutes.

(b) Occupational licensing boards shall be deemed State agencies for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and employees of occupational licensing boards shall be considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent an occupational licensing board purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars ($150,000) per claim for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply. To the extent that an occupational licensing board purchases commercial insurance coverage for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-300.6(c) shall not apply.

(c) The purchase of insurance by an occupational licensing board under this section shall not be construed to waive sovereign immunity or any other defense available to the board, its members, officers, employees, or agents in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by an occupational licensing board shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of board members, officers, employees, or agents to defense by the State as provided by G.S. 143-300.3."

SECTION 2. G.S. 143-300.2(4) reads as rewritten:

"(4) "The State" includes all departments, agencies, boards, commissions, institutions, bureaus, and authorities of the State. Community ~~colleges and~~colleges, technical ~~colleges~~ colleges, and occupational licensing boards regulated by Chapter 93B of the General Statutes shall be deemed State agencies for purposes of this Article."

SECTION 3. G.S. 93A-3(f) reads as rewritten:

"(f) The Commission is authorized to ~~expend expense reserve funds as defined in G.S. 93A-3(b) for the purpose of conducting~~ acquire, hold, convey, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to the approval of the Governor and Council of State. The rents, proceeds, and other revenues and benefits of the ownership of real property shall inure to the Commission. Collateral pledged by the Commission for any encumbrance of real property shall be limited to the assets, income, and revenues of the Commission. Leases, deeds, and other instruments relating to the Commission's interest in real property shall be valid when executed by the executive director of the Commission. The Commission may create and conduct education and information programs relating to the real estate ~~brokerage~~ business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The education and information programs may include preparation, printing and distribution of publications and articles and the conduct of conferences, seminars, and lectures. The Commission may claim the copyright to written materials it creates and may charge fees for publications and programs."

SECTION 4. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesperson shall make written application for such license to the Commission in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesperson shall be at least 18 years of age. Each applicant for a license as a real estate salesperson shall, within three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least 67 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the

Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within three years preceding the date the application is made, have satisfactorily completed, at a school approved by the Commission, an education program consisting of at least 60 hours of classroom instruction in subjects determined by the Commission, which shall be in addition to the course required for a real estate salesperson license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the education program. Each applicant for a license as a real estate broker or real estate salesperson shall be required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).

(b) Except as otherwise provided in this Chapter, any person who submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesperson shall be required to take an oral or written examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine the applicant's qualifications with due regard to the paramount interests of the public as to the applicant's competency. A person holding a real estate salesperson license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection. A person who fails the license examination shall be entitled to know the result and score. A person who passes the exam shall be notified only that the person passed the examination. Whether a person passed or failed the examination shall be a matter of public record; however, the scores for license examinations shall not be considered public records. Nothing in this subsection shall limit the rights granted to any person under G.S. 93B-8.

An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to the applicant a license, authorizing the applicant to act as a real estate broker or real estate salesperson in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than

five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. ~~All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee.~~ The fee for reinstatement of an expired license shall be fifty-five dollars ($55.00). In the event a licensee fails to obtain a reinstatement of such license within ~~12~~ six months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all reasonable rules and regulations connected with license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

SECTION 5. G.S. 93A-6 is amended by adding a new subsection to read:

"(f) In any contested case in which the Commission takes disciplinary action authorized by any provision of this Chapter, the Commission may also impose reasonable conditions, restrictions, and limitations upon the license, registration, or approval issued to the disciplined person or entity. In any contested case concerning an application for licensure, time share project registration, or school, sponsor, instructor, or course approval, the Commission may impose reasonable conditions, restrictions, and limitations on any license, registration, or approval it may issue as a part of its final decision."

SECTION 6. G.S. 114-4.2G is repealed.

SECTION 7. G.S. 89A-3.1 reads as rewritten:

"**§ 89A-3.1. Board's powers and duties.**

The Board shall have the following powers and duties:

(1) Administer and enforce the provisions of this Chapter.

(2) Adopt rules to administer and enforce the provisions of this Chapter.

(3) Examine and determine the qualifications and fitness of applicants for registration and renewal of registration.

(4) Determine the qualifications of firms, partnerships, or corporations applying for a certificate of registration.
(5) Issue, renew, deny, suspend, or revoke certificates of registration and conduct any disciplinary actions authorized by this Chapter.
(6) Establish and approve continuing education requirements for persons registered under this Chapter.
(7) Receive and investigate complaints from members of the public.
(8) Conduct investigations for the purpose of determining whether violations of this Chapter or grounds for disciplining registrants exist.
(9) Conduct administrative hearings in accordance with Article 3 of Chapter 150B of the General Statutes.
(10) Maintain a record of all proceedings conducted by the Board and make available to registrants and other concerned parties an annual report of all Board action.
(11) Employ and fix the compensation of personnel that the Board determines is necessary to carry out the provisions of this Chapter and incur other expenses necessary to perform the duties of the Board.
(12) Adopt and publish a code of professional conduct for all registrants.
(13) Adopt a seal containing the name of the Board for use on all certificates of registration and official reports issued by the Board.
(14) Retain private counsel subject to G.S. 114-2.3."

SECTION 8. Chapter 58 of the General Statutes is amended by adding the following new Article to read:

"Article 89.
"North Carolina Professional Employer Organization Act.

"**§ 58-89-1. Title.**

This Article shall be known and may be cited as the "North Carolina Professional Employer Organization Act".

"**§ 58-89-5. Definitions.**

In this Article:

(1) "Applicant" means a person applying for a registration under this Article.
(2) "Control", including the terms "controlling", "controlled by", and "under common control with", has the same meaning as in G.S. 58-19-5(2).
(3) "Managed services" means services provided by an organization that is the sole employer of employees whom it supplies to staff and to manage a specific portion of a company's workforce or a specific facility within a company on an ongoing basis. The managed services organization has responsibility for ensuring the capabilities and skills of the employees it supplies or provides, for all employer functions, for supervisory responsibility over the employees, and for management accountability of the facility or function.
(4) "Person" has the same meaning as in G.S. 58-1-5(9).

(5) "Personnel placement services" means a service that offers job placement services in which the personnel placement service organization assists persons interested in finding a job with companies that are seeking employees. Companies that hire persons through a personnel placement service are the sole employers of the persons hired, and the personnel placement service does not have any responsibility as an employer.

(6) "Professional employer organization" means a person that offers professional employer services and includes "staff leasing services companies", "employee leasing companies", "staff leasing companies", and "administrative employers" who offer or propose to offer professional employer services in this State.

(7) "Professional employer organization group" means a combination of professional employer organizations that operates under a group registration issued under this Article.

(8) "Professional employer services" means an arrangement by which employees of a registrant are assigned to work at a client company and in which employment responsibilities are in fact shared by the registrant and the client company, the employee's assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the workforce at a client company work site or a majority of the personnel of a specialized group within that workforce consists of assigned employees of the registrant. "Professional employer services" does not include services that provide temporary employees or independent contractors, personnel placement services, managed services, payroll services that do not involve employee staffing or leasing, or similar groups that do not meet the requirements of this subdivision.

(9) "Temporary employees" means persons employed under an arrangement by which an organization hires its own employees and assigns them to a client company to support or supplement the client's workforce in a special work situation, including:

a. An employee absence;
b. A temporary skill shortage;
c. A seasonal workload; or
d. A special assignment or project.

"**§ 58-89-10. Rules.**

(a) The Commissioner may adopt rules necessary to implement, administer, and enforce the provisions of this Article.

(b) Each registrant is subject to this Article and to the rules adopted by the Commissioner.

(c) Nothing in this Article preempts the existing statutory or rule-making authority of any other State agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that State agency or entity.

"**§ 58-89-15. Registration required; professional employer organization groups.**

(a) No person shall engage in or offer professional employer services in this State unless the person is registered with the Department of Insurance under this Article.

(b) Two or more professional employer organizations that are controlled by the same ultimate parent, entity, or persons may be registered as a professional employer organization group. A professional employer organization group may satisfy the requirements of this Article on a consolidated basis.

(c) An applicant for an initial professional employer organization registration shall file with the Commissioner the information required by subsection (d) of this section on a form prescribed by the Commissioner accompanied by the registration fee. No application is complete until the Commissioner has received all required information.

(d) The registration application shall, at a minimum, be comprised of all of the following information:

(1) The name, organizational structure, and date of organization of the applicant, the addresses of the principal office and all offices in this State, the name of the contact person, and the taxpayer or employer identification number.

(2) A list by jurisdiction of each name under which the applicant has operated in the preceding five years, including any alternative names, names of predecessors, and, if known, successor business entities. The list required by this subdivision shall include the parent company name and any trade name, trademark, or service mark of the applicant.

(3) A list of all officers and controlling persons of the applicant, their biographical information, including their management background, and an affidavit from each attesting to his or her good moral character and management competence.

(4) The location of the business records of the applicant.

(5) Evidence that the applicant has paid all of its obligations for payroll-related taxes, workers' compensation insurance, and employee benefits. All disputed amounts shall be disclosed in the application.

(6) Any other information the Commissioner deems necessary.

(e) An application for registration of a professional employer organization group shall contain the information required by this section for each member of the group.

(f) If the Commissioner finds that the applicant has not fully met the requirements for registration, the Commissioner shall refuse to register the applicant and shall notify the applicant in writing of the denial, stating the grounds for the denial. Within 30 days after service of the notification, the applicant may make a written demand upon the Commissioner for a review to determine the reasonableness of the Commissioner's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written demand upon the Commissioner for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

"§ 58-89-20. Fees.

(a) Each applicant for registration shall pay to the Commissioner, before the issuance of the registration, a nonrefundable application fee of two hundred fifty dollars ($250.00).

(b) Fees collected by the Commissioner under this Article shall be credited to the Department of Insurance Fund created under G.S. 58-6-25.

"§ 58-89-25. Prohibited acts.

No person shall do any of the following:

(1) Engage in or offer professional employer services without being registered under this Article as a professional employer organization.

(2) Use the name or title "staff leasing company", "employee leasing company", "registered staff leasing company", "staff leasing services company", "professional employer organization", or "administrative employer" or otherwise represent that the person is registered under this Article unless the person is registered under this Article.

(3) Represent as the person's own the license of another person or represent that a person is registered if the person is not registered.

(4) Give materially false or forged evidence to the Commissioner in connection with obtaining a registration.

"§ 58-89-30. Criminal penalty.

A person who violates G.S. 58-89-25 commits a Class H felony. Any officer or controlling person who willfully violates any provision of this Article may be subject to any and all criminal penalties available under State law."

SECTION 9. The Department of Insurance shall report to the 2005 General Assembly on the implementation, administration, and enforcement of Article 89 of Chapter 58 of the General Statutes, as enacted in Section 8 of this act. In its report, the Department shall recommend any statutory changes required to regulate professional employer organizations and enforce Article 89 of Chapter 58 of the General Statutes.

SECTION 10. Notwithstanding G.S. 58-89-30, each professional employer organization operating within this State as of January 1, 2003, shall complete its initial registration not later than 180 days after January 1, 2003. Each professional employer organization not operating within this State as of January 1, 2003, shall complete its initial registration prior to commencement of operations within this State.

SECTION 11. Sections 8 through 10 of this act become effective January 1, 2003, and apply to any contracts entered into, any business conducted, and any actions taken on or after that date. The remainder of this act becomes effective October 1, 2002.

SENATE BILL 1281:
Certain Occupational Licensing Board Changes.

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Senator Rand
Date:	October 3, 2002	**Summary by:**	Mary Shuping
Version:	4th Edition		Research Assistant

SUMMARY: ***Senate Bill 1281 makes various changes to the laws governing occupational licensing boards. Specifically, the bill would authorize all occupational licensing boards to purchase commercial insurance to cover all risks or liability, including the boards' liability for tort claims and defense of their employees. The bill authorizes the NC Real Estate Commission to acquire and deal with real property, copyright its written materials, clarify the law on real estate exam scores, and give the Board flexibility in disciplinary matters. The bill authorizes the Board of Landscape Architects to hire private counsel. Finally, the bill adds a requirement that Professional Employment Organizations (PEO's) doing business in the State register with the Department of Insurance.***

CURRENT LAW & BILL ANALYSIS:

Sections 1 & 2: Occupational Licensing Boards' Insurance. Under current law, the authority of licensing boards to purchase commercial insurance to cover risks is not clear and not uniform. While licensing boards are subject to paying negligence claims under the Tort Claims Act and are required to defend their employees from liability, claims of up to $500,000 may have to be paid out of excess funds of the boards. Some occupational licensing boards' annual budgets are less than this amount.

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operating in the State have up to 180 days to become registered. PEO's not operating in this State on January 1, 2003 must register prior to doing business in the State.

EFFECTIVE DATE: The sections regarding PEO's become effective January 1, 2003 and apply to contracts entered into, any business conducted, and any actions taken on or after that date. The remainder of this act becomes effective October 1, 2002.

Walker Reagan, Staff Attorney, Research Division, contributed substantially to this summary.

MINUTES

OCCUPANCY TAX SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON FINANCE
ROOM 424 LOB
July 17, 2002
10:00 a.m.

The Chair of the Subcommittee, Representative Mary Jarrell, called the meeting to order. Members present were Representatives Alexander and McComas, along with Staff person, Trina Griffin. The Agenda and Visitor Registration Sheet are attached as **Attachments 1 and 2**.

The bills before the committee were **SB 1195, Seven Devils Occupancy Tax and HB 1620, Jonesville Occupancy Tax**. They are incorporated into the minutes as **Attachments 3 and 4**.

Senator Foxx sponsored **SB 1195, SEVEN DEVILS OCCUPANCY TAX.** The bill would create an occupancy tax district in the town of Seven Devils, and would authorize the Seven Devils tax district to levy an occupancy tax. It would also authorize the board of aldermen, as the ex- officio district governing body, to levy a room occupancy tax of up to 3%. The Bill would provide for distribution of the tax proceeds to the Seven Devils Tourism Development Authority, for use in the district for purposes for which that authority was created. Representative McComas moved for a favorable report of the bill and that it pass out of the subcommittee to the House Finance Committee. The motion was approved.

Representative Holmes sponsored **HB 1620 YADKIN/JONESVILLE OCCUPANCY TAXES.** Representative McComas moved for the adoption of the Proposed Committee Substitute (PCS) for discussion. The PCS changed the title of the bill to *AN ACT TO AUTHORIZE THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.* It deleted the provisions authorizing Yadkin County to levy a tax. The bill authorized the Town of Jonesville Tourism Development Authority to use two-thirds of the proceeds to promote travel and tourism in the town and the remainder for tourism-related expenditures. Representative McComas moved for a favorable report of the PCS and recommended that the bill pass out of the subcommittee to the House Finance Committee. The motion was approved.

Representative Jarrell directed the committee's attention to the Guidelines for Occupancy Tax Uniform Provisions, which is incorporated into the minutes as **Attachment 5**. The guidelines stated that two-thirds of the proceeds from the tax must be used to promote travel and tourism and the remainder must be used for tourism related purposes.

The committee also discussed **HB 1707-Beach Towns Room Tax** sponsored by Representative McComas, and **HB 1720-Wilmington Occupancy Tax** sponsored by Representative Wright **(Attachments 6 and 7).** HB 1720 did not conform to the occupancy tax guidelines adopted by the subcommittee. A Proposed Committee Substitute was being drafted for HB 1707 so that it could conform to the guidelines. The convention bureau had passed a resolution proposing the creation of a Tourism Development Authority (TDA). The County Commissioners had adopted the resolution and the City of Wilmington was expected to pass the resolution. Representative McComas stated that HB 1707 was not ready for presentation to the Finance committee. Susan K. Bullock, a hotel and lodging owner from New Hanover County, expressed concerns over the use of the proceeds. She and others from the area, felt that the proceeds, if used for parking, beach cleanup, street maintenance, and other items associated with quality of life issues, would not go towards tourism. Representative Jarrell stated that the use of the proceeds could not be for any public purposes. Ms. Bullock wanted to know how the legislature defined tourist-related activity. Representative Jarrell stated that the definition was in the guidelines, and a copy of the guidelines was given to Ms. Bullock. There was a suggestion to combine the two bills. Representative Jarrell asked that the delegation and staff continue to work on the two bills.

This concluded the business before the subcommittee, and the meeting adjourned at 10:30 a.m.

Respectfully submitted,

Representative Mary Jarrell
Chair

Blinda Edwards
Committee Assistant

AGENDA
Occupancy Tax Subcommittee
Of the House Committee on Finance
July 17, 2002
10:00 a.m.
Room 425 LOB

Representative Mary Jarrell, Chair

CALL TO ORDER

BILLS TO BE HEARD

HB 1620	**Seven Devils Occupancy Tax –Representative Holmes**
SB 1195	**Seven Devils Occupancy Tax- Senator Foxx**

ADJOURNMENT

VISITOR REGISTRATION SHEET

OCCUAPANCY TAX SUBCOMMITTEE-
HOUSE FINANCE — JULY 17, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andrea Schraj	~~Rep Assistant~~
Debra Todd	Holiday Inn Express W. Salk
Susan K Bullock	Pearsall Operation DRC
Carole Lawler	NCT&TC

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S 1

SENATE BILL 1195

Short Title:	Seven Devils Occupancy Tax.	(Local)
Sponsors:	Senators Foxx; Berger, Garwood, and Moore.	
Referred to:	Finance.	

June 5, 2002

A BILL TO BE ENTITLED

AN ACT TO CREATE AN OCCUPANCY TAX DISTRICT IN THE TOWN OF SEVEN DEVILS, AND TO AUTHORIZE THE SEVEN DEVILS TAX DISTRICT TO LEVY AN OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

SECTION 1.(a) District W Created. – Seven Devils District W is created as a taxing district. Its jurisdiction consists of that part of the Town of Seven Devils that is located in Watauga County. Seven Devils District W is a body politic and corporate and has the power to carry out the provisions of this section. The Seven Devils Board of Aldermen shall serve ex officio as the governing body of the district, and the officers of the board of aldermen shall serve as the officers of the governing body of the district. A simple majority of the governing body constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

SECTION 1.(b) Authorization and Scope. – The governing body of Seven Devils District W may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the district that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or room occupancy tax. This tax does not apply to accommodations furnished by charitable, educational, or religious institutions or nonprofit organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215 as if Seven Devils District W were a town. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

All persons, firms, corporations, and associations who rent either their own dwelling or dwellings or rooms for other persons are required to submit to the district a list of all rental properties. This list must include the owner's name, current address, and

location of rental property. The list must be submitted semiannually on or before November 30 and May 30. Failure to file this list subjects the person, firm, corporation, or association to a civil penalty.

SECTION 1.(d) Distribution and Use of Tax Revenue. – Seven Devils District W shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Seven Devils Tourism Development Authority created in accordance with Part XVI of S.L. 2001-439. The Seven Devils Tourism Development Authority shall use the tax proceeds remitted to it under this act for the purposes provided in Part XVI of S.L. 2001-439. In accordance with the North Carolina Constitution and the United States Constitution, the tax proceeds may be used only for the direct benefit of the jurisdiction of Seven Devils District W.

For the purposes of this section, "net proceeds" means gross proceeds less the cost to the district of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

SECTION 2. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the

preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District ~~W,~~ W and Seven Devils District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H D

HOUSE BILL 1620
PROPOSED COMMITTEE SUBSTITUTE H1620-CSLC-97 [v.2]

6/25/2002 10:36:41 AM

Short Title: Jonesville Occupancy Tax. (Local)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF JONESVILLE TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Jonesville occupancy tax. – (a) Authorization and Scope. – The Jonesville Town Council may levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(b) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Distribution and Use of Tax Revenue. – The Town of Jonesville shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Jonesville Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct

market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of the tourism development authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. Jonesville Tourism Development Authority. – (a) Appointment and Membership. – When the Jonesville Town Council adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The town council shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Jonesville shall be the ex officio finance officer of the Authority.

SECTION 2.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 2.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the Jonesville Town Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the town council may require.

SECTION 3. Town administrative provisions. – G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall

be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

GUIDELINES FOR OCCUPANCY TAX UNIFORM PROVISIONS

Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably.

Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. Many of the principles contained in its statement are similar to the ones established by the House Finance subcommittee in 1993. Based upon this work, the House Finance Committee looks for the inclusion of the following uniform provisions in the occupancy tax bills it considers:

- **Rate** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
- **Use** – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related purposes.
- **Definitions** The terms "net proceeds", "promote travel and tourism", and "tourism-related expenditures" are defined terms:
  - **Net proceeds** – Gross proceeds less the costs to the city/county of administering and collecting the tax, as determined by the finance officer, not to exceed 3% of the first $500,000 of gross proceeds collected each year and 1% of the remaining gross receipts collected each year.
  - **Promote travel and tourism** – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.
  - **Tourism-related expenditures** – Expenditures that, in the judgment of the Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the city/county. The term includes tourism-related capital expenditures.
- **Administration** – The net revenues must be administered by a local tourism promotion agency, typically referred to as a "Tourism Development Authority," that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

- **Beach Nourishment** – During the 2001 Regular Session, the Occupancy Tax Subcommittee of the House Finance Committee considered several bills authorizing the use occupancy tax proceeds for beach nourishment. Although "beach nourishment" was not among the uses contained in the uniform guidelines, the subcommittee nevertheless concluded that beach nourishment was an acceptable expansion of the occupancy tax use provisions. In doing so, the subcommittee drafted a uniform definition of beach nourishment for use in occupancy tax legislation. The subcommittee defined beach nourishment as:

  > The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the North Carolina shorelines and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for the following:
  >
  > a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies;
  > b. The nonfederal share of the cost required to construct these projects;
  > c. The costs associated with providing enhanced public beach access; and
  > d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1707

Short Title:	Beach Towns Room Tax.	(Local)
Sponsors:	Representative McComas.	
Referred to:	Finance.	

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWNS OF CAROLINA BEACH, KURE BEACH, AND WRIGHTSVILLE BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, IF APPROVED BY THE VOTERS.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies only to the towns of Carolina Beach, Kure Beach, and Wrightsville Beach.

SECTION 2. Occupancy tax. – (a) Referendum. – The governing body of a town may direct the county board of elections to conduct an advisory referendum on the question of whether to levy a local occupancy tax in the town as provided in this act. The election shall be held on a date jointly agreed upon by the governing body and the board of elections and shall be held in accordance with the procedures of G.S. 163-287. The form of the question to be presented on a ballot for a special election concerning the levy of the tax authorized by this act shall be:

'[ ] FOR [ ] AGAINST

A local occupancy tax of up to three percent (3%), in addition to the current local sales and occupancy taxes.'

SECTION 2.(b) Authorization and Scope. – If the majority of those voting in a referendum held pursuant to this act vote for the levy of the tax within a town, the governing body of the town may, by resolution, levy a local occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

During the first year a tax levied under this section is in effect, the tax rate may not exceed one percent (1%). During the second year a tax levied under this section

is in effect, the tax rate may not exceed two percent (2%). Thereafter, the maximum tax rate is three percent (3%).

SECTION 2.(c) Administration. – A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 2.(d) Distribution and Use of Tax Revenue. – The taxing town shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the town's Tourism Development Authority. The Authority shall use at least two-thirds of the funds remitted to it under this subsection to promote travel and tourism in the town and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. – Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. – Expenditures that, in the judgment of Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 3. Tourism Development Authority. – (a) Appointment and Membership. – When the governing body of a town adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a town Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide for the membership of the Authority, including the members' terms of office, and for the filling of vacancies on the Authority. At least one-third of the members must be individuals who are affiliated with businesses that collect the tax in the town and at least three-fourths of the members must be individuals who are currently active in the promotion of travel and tourism in the town. The governing body shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the taxing town shall be the ex officio finance officer of the Authority.

SECTION 3.(b) Duties. – The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 2 of this act. The Authority shall promote travel, tourism, and conventions in the town, sponsor

tourist-related events and activities in the town, and finance tourist-related capital projects in the town.

SECTION 3.(c) Reports. – The Authority shall report quarterly and at the close of the fiscal year to the governing body of the taxing town on its receipts and expenditures for the preceding quarter and for the year in such detail as the governing body may require.

SECTION 4. Town administrative provisions. – G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, ~~and Wilkesboro,~~Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H 2

HOUSE BILL 1720
Committee Substitute Favorable 9/19/02

Short Title: Wilmington Occupancy Tax. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

SECTION 1.(b) Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The following definitions apply in this section:

(1) Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

SECTION 1.(d) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account. Funds in the account, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes, at a minimum, obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been met but within four years after the first levy of a tax under this section, the City of Wilmington fails to demonstrate to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

SECTION 1.(e) Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request.

SECTION 2. City administrative provisions. – G.S. 160A-215, as amended by S.L. 2002-95, reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the

tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

MINUTES

OCCUPANCY TAX SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON FINANCE
ROOM 424 LOB
AUGUST 27, 2002
11:00 a. m.

Representative Jarrell, Chair of the Subcommittee, called the meeting to order. Members present were Representatives Alexander and McComas, along with Trina Griffin, Staff Attorney. The Agenda and Visitor Registration Sheet are attached as **Attachments 1 and 2.**

The Bills before the committee were HB 1707 and HB 1720 **(Attachments 3 and 4)**. Representative Jarrell reviewed the rules and guidelines for occupancy tax bills. She stated that occupancy tax is used to promote travel and tourism. She reiterated that the interest of the subcommittee was that the bills meet the guidelines for occupancy tax. Local bills need the approval of the entire delegation. HB 1707 and HB 1720 conformed to the guidelines and were eligible for consideration. Representative McComas asked for an explanation of "non-controversial" concerning the delegation. Ms. Griffin responded that local bills require that the bill sponsor submit a form that the delegation is in agreement with the bill. Representative Jarrell recognized those persons from the audience who wished to speak on the bills.

Avery Roberts, Mayor of Wrightsville Beach

Mayor Roberts and the Mayors of Kure Beach and Carolina Beach supported HB 1707. They were asking the General Assembly to authorize an additional 3% room occupancy tax during this session. The additional tax would generate funds for tourism-related expenditures and tourism promotion. HB 1707 would provide revenue for the beach communities. A detailed statement from Mayor Roberts is attached as **Attachment 5.**

Harper Peterson, Mayor of Wilmington

Mayor Peterson stated that the City of Wilmington supported HB 1707 and HB 1720. There was special interest in HB 1720 because of the convention center. The convention center would provide good paying jobs and would be

good for the economy. No money had been raised for the convention center, but the passing of HB 1720 would serve as a stimulus. The occupancy tax would raise 1.4 Million Dollars annually and would serve all of New Hanover County. He supported the separate consideration of each bill by the committee.

Sue Bullock, Governmental Relations Officer, Pearsall Operating Company (Wrightsville Beach Holiday Inn SunSpree Resorts, Inc., Ashville Comfort Inn River Ridge, and other properties)

Ms. Bullock spoke on behalf of hotel and lodging owners across New Hanover County. The owners opposed both bills based on the formation of two bills for one county. They felt it should be a single block of money. She also cited problems with inclusion and exclusion of local industry and tax collectors. Lack of collaboration further illustrated the problems that existed with the planning process of the county regarding tourism and its development. The county did not fully support the convention center concept. They would support an additional 3% occupancy tax if it were to follow the existing formula of 60% for beach nourishment and 40% for tourism development. Representative McComas disagreed that local industry and tax collectors were not consulted and were left out concerning the bill. Further comments by Ms. Bullock are attached as **Attachment 6**.

Representative Jarrell recognized Ms. Griffin to explain the difference between the two bills. Ms. Griffin explained that HB 1720 allowed the proceeds of the additional tax to be used for the construction, financing, operation, promotion, and maintenance of a convention center; for purposes as designated by a local act of the General Assembly; and for promotion of travel and tourism. A public hearing is required before levying the tax. HB 1707 allowed the proceeds of the additional tax to be remitted quarterly to a Tourism Development Authority, which is required to be established by the bill. The Authority must use one-half of the proceeds to promote travel and tourism and one-half for tourism-related expenditures.

The Chair recognized Gerry Hancock, General Counsel of the North Carolina Travel and Tourism Coalition. He was asked if the two bills could be combined. He felt that the combination could work well. The McComas bill did comply, however, an amendment, proposed by Representative McComas, would take it out of compliance and the Coalition would not

support it. There was substantial interest in HB 1720, which promotes the convention center under the authority of a Tourism Development Authority (TDA). However, the bill did not establish a TDA. He felt the two bills, if put together, would compliment each other. Representative Wright stated that the County Commissioners did not support the combining of the bills. If the subcommittee favored combining the bill, then he would withdraw his bill. Representative McComas agreed with Representative Wright that the County Commissioners would not support combining the bills. He asked staff to research if there had been any previous occupancy tax research on bills similar to these bills.

Representative Jarrell stated that the subcommittee would consider the interest, input, and opinions stated at the meeting. The subcommittee did not take sides, and would continue to work on the two bills.

The meeting adjourned at 12:00 p.m.

Respectfully submitted,

Representative Mary Jarrell
Chair

Blinda Edwards
Committee Assistant

Attachment 1

AGENDA

Occupancy Tax Subcommittee

Of the House Committee on Finance

August 27, 2002
11:00 a.m.
Room 424 LOB

Representative Mary Jarrell, Chair

CALL TO ORDER

BILLS TO BE HEARD

HB 1707	Beach Towns Room Tax- Representative McComas
HB 1720	Wilmington Occupancy Tax-Representative Wright

ADJOURNMENT

Attachment 2

VISITOR REGISTRATION SHEET

OCCUAPANCY TAX SUBCOMMITTEE-
HOUSE FINANCE — **Name of Committee**

AUGUST 27, 2002 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
RAY ROTHROCK	MAYOR, TOWN OF CAROLINA BEACH
Remarks Avery Roberts, Jr	Mayor Wrightsville Beach
Betty L. Medlin	Mayor - Kure Beach
Mary Wilson Baggett/Hutton	Blockade Runner Beach Resort, Wrightsville Beach
Carol Lawler	NCTTC
Judith Grizzle	Pres/CEO Cape Fear Coast CVB
Carl Moorehouse	Cape Fear Coast CVB
CALVIN PECK	MANAGER - CAROLINA BEACH
ANDY HONEYCUTT	MANAGER - WRIGHTSVILLE BEACH
BARRY MOWBRAY	ALDERMAN - WRIGHTSVILLE BEACH
Yes Susan K Bullock	Holiday Inn Sunspree Pearsall Operating / WB & Ashley

VISITOR REGISTRATION SHEET

OCCUAPANCY TAX SUBCOMMITTEE-
HOUSE FINANCE — AUGUST 27, 2002

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J E Hobbs	NCHLA
Jerry Hancock	NCTTC
Frank Comon	Wilmington City Council
Harper Peterson	W. Immington. MAYOR

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1707
PROPOSED COMMITTEE SUBSTITUTE H1707-CSLCx-109 [v.8]

8/14/2002 11:03:48 AM

Short Title: New Hanover Beach Towns Tourism Act. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TOURISM DEVELOPMENT FOR THE NEW HANOVER BEACH TOWNS, TO PROVIDE FOR THE ESTABLISHMENT OF A TOURISM DEVELOPMENT AUTHORITY, AND TO CONFORM ADMINISTRATIVE PROVISIONS OF THE NEW HANOVER COUNTY LAW TO GENERAL LAW.

The General Assembly of North Carolina enacts:

NEW HANOVER BEACH TOWNS TOURISM DEVELOPMENT ACT

SECTION 1.(a) This section applies only to the towns of Carolina Beach, Kure Beach, and Wrightsville Beach.

SECTION 1.(b) Authorization and Scope. – The governing body of a beach town may, by resolution, levy a local occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – New Hanover County shall collect and administer on behalf of each beach town the tax the town levies under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied by each beach town under this section to the Tourism Development Authority for deposit to a separate account for that beach town. The Authority shall use at least one-half of the funds in each beach town account to promote travel and tourism in that beach town and shall use the remainder in each beach town account for tourism-related expenditures in that beach

town. Before spending any funds in a beach town account for promoting travel and tourism or for tourism-related expenditures, the Authority must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to

the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, ~~and Wilkesboro,~~Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

MODIFY NEW HANOVER COUNTY ADMINISTRATIVE PROVISIONS

SECTION 3. Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section 32(b) of Chapter 908 of the 1983 Session Laws.

SECTION 4. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, and Section 3 of this act, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-percent Tax. – The New Hanover County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"~~Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied under this Part shall be~~ levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of any accommodations within the county that are subject to ~~room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%)~~ sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

(b) Additional One-percent Tax. – In addition to the tax authorized by ~~Sections 31 and 32 of this Part,~~ subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections.~~that subsection. The levy, collection, administration, and repeal of the tax authorized by this ~~section,~~ subsection, and the use of tax revenue from a tax levied under this ~~section,~~subsection, shall be in accordance with Sections 31 through ~~36~~ 35 of this Part. New Hanover County may not levy a tax under this ~~section~~ subsection unless it also levies a tax under ~~Sections 31 and 32 of this Part.~~ subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

(1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.

b. The nonfederal share of the cost required to construct these projects.

c. The costs associated with providing enhanced public beach access.

d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed six months, or both.~~

~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or added to the tax levied under this Part, as prescribed in subsections (b) and (c) above, the Board of Commissioners of New Hanover County, upon petition of the taxpayer or his agent, may compromise, settle, or adjust the county's claim for the penalties imposed.~~

"Sec. 34. Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating a

county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following thirteen voting members: five ex officio members or their designees and eight additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in their place an individual who is actively involved in promoting travel and tourism in the local community the member represents or who owns or manages a lodging facility in the local community the member represents.

a. The chair of the board of county commissioners.

b. The mayor of the City of Wilmington.

c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.

a. The owner or manager of a hotel of 150 rooms or more in one of the three beach towns. This individual must have experience in promoting travel and tourism.

b. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.

c. The owner or manager of a hotel of fewer than 150 rooms. This individual must have experience in promoting travel and tourism.

d. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.

e. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.

f. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

g. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

h. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the

Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

~~Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 35. Disposition of Taxes Collected. ~~(a)~~ – New Hanover County shall distribute the net proceeds of the occupancy ~~tax~~ taxes levied under Section 31 of this Part as ~~follows:~~provided in this section:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. ~~159-30; and~~ 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the ~~county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed.~~Tourism Development Authority. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

~~Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be~~

~~used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.~~

~~The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State.~~

~~"Sec. 36. Repeal of Levy. (a) The board of commissioners may by resolution repeal the levy of the room occupancy tax in new Hanover County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~"

SECTION 5. G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An

operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 6. The amendments made by this act to Section 34 of Chapter 908 of the 1983 Session Laws, as amended, are effective when this act becomes law. The remainder of this act becomes effective February 1, 2003.

HOUSE BILL 1707:
New Hanover Beach Towns Tourism Act

BILL ANALYSIS

Committee:	Occupancy Tax Subcommittee of the House Finance Committee	**Introduced by:**	Rep. McComas
		Summary by:	Trina Griffin Committee Counsel
Date:	August 27, 2002		
Version:	PCS for 1st Edition H1707-CSLCx-109 [v.8]		

*SUMMARY: **The proposed committee substitute for House Bill 1707 authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax. The proceeds must be remitted quarterly to a Tourism Development Authority, which is required to be established by the bill. The Authority must use one-half of the proceeds to promote travel and tourism and one-half for tourism-related expenditures.***

The section requiring the establishment of a Tourism Development Authority becomes effective when the act becomes law. The reminder of the act becomes effective February 1, 2003.

CURRENT LAW: Currently, the towns of Carolina Beach, Kure Beach, and Wrightsville Beach do not have authority to levy an occupancy tax. However, they do receive a portion of the occupancy tax proceeds levied by the county. Since 1985, New Hanover has had the authority to levy a 3% occupancy tax. Sixty percent (60%) of the total proceeds are deposited into a special fund to be used to control beach erosion. The remainder is distributed among the county and the municipalities in accordance with the method by which the 1% local sales and use taxes levied in the county are distributed and is to be used to promote travel and tourism.[1]

BILL ANALYSIS: The proposed committee substitute for House Bill 1707 has two main parts. The first part affects the beach towns only and the second part modifies the county's current authority to levy a 3% occupancy tax:

I. <u>Beach Towns Tourism Development Act</u>

Rate – It authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax.

Administration – The county would collect the proceeds for each beach town and remit the funds, on a quarterly basis, to the TDA. The TDA will distribute the funds and must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

Use – 50% to promote travel and tourism; 50% for tourism-related expenditures.

II. <u>Modify New Hanover County Administrative Provisions</u>

Creation of a TDA - Currently, the county has a convention and visitors bureau, which was established without any authorizing legislation.

[1] New Hanover uses an ad valorem method of local sales and use tax distribution.

- The PCS would require the county to create a Tourism Development Authority as soon as practicable before February 1, 2003. Upon its creation, the county must transfer all of the assets of the convention and visitors bureau to the TDA.
- The TDA would consist of 13 voting members, with 5 *ex officio* members and 8 additional members appointed by the board of commissioners. The eight additional members would consist of 5 owners/operators of lodgings (hotels, bed and breakfast, and rental properties), 2 people actively involved in promoting tourism in the county, and 1 owner/operator of a restaurant.

Use –

- 60% - Under current law, New Hanover uses 60% of its occupancy tax proceeds to control beach erosion. The PCS changes the term to "beach nourishment," a defined term. These funds would continue to be deposited into a special account administered by the county.
- 40% - Under current law, the remaining 40% is distributed among the county and the municipalities and used to promote travel and tourism. Under the PCS, the use would remain the same but the funds would be remitted to and distributed by the TDA.

Uniform Administrative Provisions - It conforms the provisions regarding the levy, administration, collection and repeal of the county tax to the statutory provisions in G.S. 153A-155. Uniform statutory penalties also apply.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1707

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

H1707-ASV-103 [v.4]

Date _____,2002

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative McComas (by request)

moves to amend the bill on page 1, line 26, by deleting the words "one-half" and substituting the words "forty percent (40%)";

and on page 2, lines 1-4, by rewriting the lines to read:
"town. The expenditure of any funds in a beach town account for promoting travel and tourism or for tourism-related expenditures must be authorized by both the Authority and the governing body of the affected beach town.";

and on page 2, line 24, by rewriting the line to read:
"includes tourism-related services and capital expenditures.";

and on page 6, line 15, by deleting the sentence that begins on that line and substituting the following sentence:
"The board of county commissioners shall appoint the members listed below, following receipt of nominations from the beach towns and the City of Wilmington.";

and on page 6, line 4, by deleting the word "thirteen" and substituting the word "fifteen";

and on page 6, line 5, by deleting the word "eight" and substituting the word "ten";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1707

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

H1707-ASV-103 [v.4]

and on page 6, lines 18-19, by deleting the sentence that begins on line 18 and substituting the following sentence:

"a. The owner or manager of a hotel in each of the three beach towns.";

and on page 6, line 24, by inserting the following phrase between the word "rooms" and the period:

"in the City of Wilmington.";

and on page 6, line 27, by deleting the sentence that begins on that line and substituting the following sentence:

"A representative of a Chamber of Commerce of one of the beach towns who is actively involved in promoting travel and tourism in the county.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1720
PROPOSED COMMITTEE SUBSTITUTE H1720-CSLCx-108 [v.7]

8/26/2002 12:04:49 PM

Short Title: New Hanover Occupancy Tax Changes. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE NEW HANOVER COUNTY ROOM OCCUPANCY TAX AND TO AUTHORIZE THE CITY OF WILMINGTON AND THE TOWNS OF CAROLINA BEACH, KURE BEACH, AND WRIGHTSVILLE BEACH TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Section 36.1 of Chapter 908 of the 1983 Session Laws is redesignated as Section 32(b) of Chapter 908 of the 1983 Session Laws.

SECTION 2. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, and Section 1 of this act, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-percent Tax. – The New Hanover County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"~~Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied under this Part shall be~~ levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of any accommodations within the county that are subject to ~~room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%)~~ sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax

is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

(b) Additional One-percent Tax. – In addition to the tax authorized by ~~Sections 31 and 32 of this Part,~~ subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections.~~that subsection. The levy, collection, administration, and repeal of the tax authorized by this ~~section,~~ subsection, and the use of tax revenue from a tax levied under this ~~section,~~subsection, shall be in accordance with Sections 31 through ~~36~~ 35 of this Part. New Hanover County may not levy a tax under this ~~section~~ subsection unless it also levies a tax under ~~Sections 31 and 32 of this Part.~~ subsection (a) of this section.

(c) Additional Three-percent Tax. – In addition to the taxes authorized by subsections (a) and (b) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of three percent (3%) of the gross receipts derived from the rental of accommodations taxable under those subsections.

Before adopting a resolution levying a tax under this subsection, the board of commissioners must hold a public hearing on the question. The board of commissioners must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. Except as otherwise provided in this subsection, the levy, collection, administration, and repeal of the tax authorized by this subsection, and the use of tax revenue from a tax levied under this subsection, shall be in accordance with Sections 31 through 35 of this Part.

A tax levied under this subsection shall become effective no earlier than February 1, 2003. In addition, if a municipality has levied a room occupancy tax under subsection (d) or (e) of this section before the levy of a tax under this subsection, the tax levied under this section may not become effective until the first day of the second calendar quarter after the resolution levying the tax is adopted. New Hanover County may not levy a tax under this subsection unless it also levies a tax under subsections (a) and (b) of this section.

(d) Alternative Wilmington Three-percent Tax. – If New Hanover County has not levied a tax under subsection (c) of this section, the Wilmington City Council may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of accommodations within the city taxable under subsections (a) and (b) of this section.

Before adopting a resolution levying a tax under this subsection, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. New Hanover County shall collect and administer a tax levied under this subsection. Except as otherwise provided in this subsection, the levy, collection, administration, and repeal of the tax shall be in accordance with Sections 31 through 35 of this Part. A tax levied under this subsection shall become effective no earlier than March 1, 2003.

The net proceeds of a tax levied under this subsection shall be shall be remitted to the convention center account in subsection (c) of Section 35 of this Part.

If the city levies a tax under this subsection and the New Hanover County Board of Commissioners subsequently adopts a resolution levying a tax under subsection (c) of this section, the city's authority to levy the tax under this subsection is repealed as of the effective date of the county levy.

(e) Alternative Beach Town Three-percent Tax. – If New Hanover County has not levied a tax under subsection (c) of this section, the governing body of a beach town may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of accommodations in the town taxable under subsections (a) and (b) of this section.

Before adopting a resolution levying a tax under this subsection, the town governing body must hold a public hearing on the question. The governing body must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. New Hanover County shall collect and administer a tax levied under this subsection. Except as otherwise provided in this subsection, the levy, collection, administration, and repeal of the tax shall be in accordance with Sections 31 through 35 of this Part. A tax levied under this subsection shall become effective no earlier than March 1, 2003.

The net proceeds of a tax levied under this subsection shall be deposited in a separate account for the beach town that levied the tax. If the county creates a Tourism Development Authority pursuant to a local act of the General Assembly, the county shall transfer these beach town accounts to the Tourism Development Authority. Funds in the beach town accounts may be used only for the purposes provided in a local act of the General Assembly.

If a beach town levies a tax under this subsection and the New Hanover County Board of Commissioners subsequently adopts a resolution levying a tax under subsection (c) of this section, the town's authority to levy the tax under this subsection is repealed as of the effective date of the county levy.

"Sec. 32. Definitions. – The following definitions apply in this Part:

(1) Reserved.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

"Sec. 33. Administration of Tax. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties

provided in G.S. 153A-155 apply to a tax levied under this act.~~(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed six months, or both.~~

~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or added to the tax levied under this Part, as prescribed in subsections (b) and (c) above, the Board of Commissioners of New Hanover County, upon petition of the taxpayer or his agent, may compromise, settle, or adjust the county's claim for the penalties imposed.~~

"Sec. 34. Reserved.

~~Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 35. Disposition of Taxes Collected. – (a) First Three Cents. – New Hanover County shall distribute the net proceeds of the occupancy ~~tax~~ taxes levied under subsections (a) and (b) of Section 31 of this Part as ~~follows:~~provided in this subsection:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or

invested in accordance with G.S. ~~159-30; and~~ 159-30. These funds shall be used only to control beach erosion.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed. These funds shall be used only to promote travel and tourism throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

(b) Second Three Cents. – New Hanover County shall distribute the net proceeds of the occupancy tax levied under subsection (c) of Section 31 of this Part as provided in this subsection:

(1) The net proceeds collected from accommodations located in the City of Wilmington shall be remitted to the convention center account in subsection (c) of this section.

(2) The net proceeds collected from accommodations located in each beach town shall be deposited in a separate account for that beach town. If the county creates a Tourism Development Authority pursuant to a local act of the General Assembly, the county shall transfer these accounts to the Tourism Development Authority. Funds in the accounts may be used only for the purposes provided in a local act of the General Assembly.

(3) The remaining net proceeds shall be used only to promote travel and tourism in the county. If the county creates a Tourism Development Authority pursuant to a local act of the General Assembly, the county shall remit these funds to the Tourism Development Authority to be used only to promote travel and tourism in the county.

(c) Convention Center Account. – The county shall create a convention center account. Funds in the account, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) If, at the end of three years after the first levy of a tax under subsection (c) or (d) of Section 31 of this Part, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the

convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes at a minimum obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) If, within three years after the first levy of a tax under subsection (c) or (d) of Section 31 of this Part, the City of Wilmington demonstrates to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes at a minimum obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been met but within four years after the first levy of a tax under subsection (c) or (d) of Section 31 of this Part, construction has not begun on a convention center in the Wilmington Historic District, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

(d) Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this Part must annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request.

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

~~Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.~~

~~The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State.~~

~~"Sec. 36. Repeal of Levy. (a) The board of commissioners may by resolution repeal the levy of the room occupancy tax in new Hanover County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~"

SECTION 3. County administrative provisions. – G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the

purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 4. Town administrative provisions. – G.S. 160A-215 reads as rewritten:

"§ 160A-215. Uniform provisions for room occupancy taxes.

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room

occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and Wilmington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, ~~and~~

~~Wilkesboro,~~Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

SECTION 5. This act becomes effective February 1, 2003.

HOUSE BILL 1720:
New Hanover Occupancy Tax Changes

BILL ANALYSIS

Committee:	Occupancy Tax Subcommittee of the House Finance Committee	**Introduced by:**	Rep. Wright
		Summary by:	Trina Griffin Committee Counsel
Date:	August 27, 2002		
Version:	PCS for 1st Edition H1720-CSLCx-108 [v.7]		

SUMMARY: ***House Bill 1720 authorizes New Hanover to increase its occupancy tax from 3% to 6%. If New Hanover does not levy the additional 3% tax, the City of Wilmington and other beach towns are authorized to levy a 3% occupancy tax. The proceeds of the additional tax would be allotted for the following uses:***

- ***For the construction, financing, operation, promotion, and maintenance of a convention center.***
- ***For purposes as designated by a local act of the General Assembly.***
- ***For promotion of travel and tourism.***

The act becomes effective February 1, 2003.

CURRENT LAW: In 1983, the General Assembly authorized New Hanover to levy a 2% occupancy tax. In 1985, New Hanover was authorized to levy an additional 1%. None of the municipalities in New Hanover have authority to levy an occupancy tax, but they each receive a portion of the proceeds collected by the county. Sixty percent (60%) of the total proceeds are deposited into a special fund to be used to control beach erosion. The remainder is distributed among the county and the municipalities in accordance with the method by which the 1% local sales and use taxes levied in the county are distributed and is to be used to promote travel and tourism.

BILL ANALYSIS: The proposed committee substitute for House Bill 1720 does the following:

Authority to Levy

- It authorizes New Hanover to levy an additional 3% occupancy tax. If New Hanover does not levy the tax, the City of Wilmington and the towns of Carolina Beach, Kure Beach, and Wrightsville Beach are each authorized to levy a 3% occupancy tax.
- It requires that, before adopting a resolution levying a tax, the governing body of the entities authorized to levy a tax hold a public hearing. They must give at least 15 days' notice of the hearing, including details on the proposed uses of the tax proceeds.
- The county tax may become effective no earlier than February 1, 2003. A tax levied by the city or the towns may become effective no earlier than March 1, 2003.
- If either the city or any of the towns levy the 3% occupancy tax and the county subsequently adopts a resolution to levy the tax, the city's or town's authority to levy the tax is repealed as of the date of the effective date of the county levy.

Use and Administration of Tax Proceeds

First 3%	Use	Administration
60%	To control beach erosion	Funds to be kept in a special fund administered by the county.
40%	To promote travel and tourism throughout the county	Funds to be distributed among the county and municipalities in accordance with the method by which the 1% local sales and use taxes are distributed.
Additional 3%		
Wilmington Proceeds	(1) If certain conditions are met, the proceeds would be used for the construction, financing, operation, promotion, and maintenance of a convention center. (2) If conditions are not met, funds to be used to promote travel and tourism.	• If (1) applies, the funds are remitted to the City of Wilmington. • If (2) applies, the funds are remitted to the TDA.
Beach Town Proceeds	For purposes "provided in a local act of the General Assembly."	• County to administer proceeds and keep proceeds in separate accounts for each beach town. • If, however, the county establishes a TDA, the funds will be remitted to TDA.
Unincorporated Area Proceeds	To promote travel and tourism	• County to administer proceeds. • If, however, the county establishes a TDA, the funds will be remitted to TDA.
Alternative 3% Levied by City & Towns		
Wilmington	(1) If certain conditions are met, the proceeds would be used for the construction, financing, operation, promotion, and maintenance of a convention center. (2) If conditions are not met, funds to be used to promote travel and tourism.	• If (1) applies, the City of Wilmington would administer the funds. • If (2) applies, the funds are remitted to the TDA.
Beach Towns	For purposes "provided in a local act of the General Assembly."	• Each town to administer proceeds from that town. • If, however, the county establishes a TDA, the funds will be remitted to TDA.

Conditions for Convention Center

1) If, within 3 years after the first levy of the additional 3% tax, the City of Wilmington has demonstrated to the satisfaction of the TDA that all financing and development arrangements for a convention center have been completed, the county must remit the funds to the City of Wilmington to be used for the construction, financing, operation, promotion, and maintenance of a convention center.
2) If the conditions in 1) have not been met, the county must remit the funds to the TDA to be used to promote travel and tourism.
3) If the conditions in 1) have been met but within four years after the first levy of the additional 3% tax, construction has not begun on a convention center, then the city must return any funds it received that have not been committed. These proceeds shall then be used to promote travel and tourism.

Reporting Requirements

Each entity responsible for administering and spending the proceeds of the occupancy tax must annually publish a detailed, audited report on its receipts and expenditures during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request. These reporting requirements would apply to the county, city, and towns as well as the TDA, depending on which entity is administering the funds.

TECHNICAL CONSIDERATIONS:

- The bill does not require the establishment of a TDA. However, under the current wording of the bill, the only way that a portion of the funds from the additional 3% could be used for a convention center is if there is a TDA. If there is a TDA, then the remainder of the proceeds will also be administered by the TDA.
- The proceeds derived from accommodations in the beach towns are to be used as directed by a local act of the General Assembly. Currently, there is no local act directing the use of these funds. Thus, until a local act is enacted directing the use of these funds, the funds could not be used.

HB 1707 (v.9) New Hanover County Beach Towns Additional 3% Room Occupancy Tax

Bill Justification

Good morning Representative JARREL, Representative Avery Roberts, Mayor of Wrightsville Beach ALEXANDER, and Representative McComas. I am _____, a member of the New Hanover County Beach Communities Board and here today to present to you our support of HB1707. Also here in support of this bill is _____ Mayor Betty Medlin, Kure Beach; Alderman Ray Rothrock, Carolina Beach; Barry Mowbray, Wrightsville Beach

3 Towns have united + the N.H. County Commissioners + a majority have said they support what the beach Communities support

- The Towns of Carolina Beach, Kure Beach, and Wrightsville Beach are seeking approval by the General Assembly during this session to authorize an additional 3% room occupancy tax. The purpose of the additional tax is to generate funds for tourism-related expenditures and tourism promotion. New Hanover County currently has a 3% room occupancy tax for beach nourishment and tourism promotion. The promotion funds from the existing tax are utilized by the Convention and Visitors Bureau to .support tourism in the Cape Fear Coast region.

- The beach towns of New Hanover County provide services to more visitors than any other coastal county in North Carolina. As a recent beach strand survey has indicated, 9 out of 10 visitors to our county beaches are non-beach residents.

- Marketing is most successful when the product is of the highest quality. HB1707 as drafted provides revenue for the beach communities to make the product, our beaches, and our services and facilities, better and thereby improves the effectiveness of the promotional expenditures. Our ability to provide the beach visitor with high quality services and facilities is directly dependent upon the passage of HB1707.

- New Hanover County, unlike many other coastal counties, does not consider its beaches part of a county recreational amenity and therefore does not provide any financial support for the programs, facilities, and services that are necessary to operate a successful tourist beach. Unfortunately, our beach communities receive minimal tourism sales tax dollars due to the sales tax distribution formula (CHART). As you can see, New Hanover County benefits from approximately 75% of the local sales tax revenue, the City of Wilmington has a 22% benefit while the three beaches only receive 3% of the local sales tax revenue.

- HB1707 establishes a reliable source of revenue, retained at the point of origin, for new and innovative local travel promotion as well as the development of new tourism facilities and services. Not unlike convention facilities, beaches require substantial maintenance and operational expenditures. Whether it is beach strand cleaning, trash removal, public restroom facilities, public beach accesses,

lifeguards, public safety, or other of the many services and operations performed for the tourist population, each has an associated cost. The quality of those facilities and services, which we consider our "product", is directly correlated to the availability of funds. The success of our promotional expenses and the promotional investment of the Tourism Development Authority is directly tied to the quality of our product.

- The distribution formula for HB1707 has a 60% tourism-related expenditures, 40% tourism promotion allocation. This formula is consistent with the existing 3% room occupancy tax allocating 40% to tourism promotion. We are concerned that any formula giving greater than the current 40% tourism promotion allocation could jeopardize the existing 3% distribution and our critical beach nourishment program. The distribution formula for the existing 3% has been modified twice previously by the General Assembly reducing beach nourishment allocations by a total of 20% while increasing promotional funding by the same. Both federal and state funding for beach nourishment project allocation continue to be threatened.

- HB1707 establishes a Tourism Development Authority for New Hanover County that would replace the existing Convention and Visitors Bureau. The beach communities support the CVB and understand the only visible change would be the makeup of the authority membership. The latest version establishes an

authority membership that correlates to the amount of funds generated from the beach towns of New Hanover County and the City of Wilmington.

- In closing, the beach communities of New Hanover County ask your support for HB1707. Our situation is unique and there remains a tremendous demand for tourism services solely provided by our beach municipalities. We appreciate this opportunity to present our support of HB1707 to you.

I or another representative of our group would be happy to answer any questions....

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Memo to: Honorable Mary L. Jarrell, Chairman
House Committee on Finance Sub-Committee on Occupancy Taxes

From: Susan K. Bulluck, Governmental Relations Officer
Pearsall Operating Company (Wrightsville Beach Holiday Inn SunSpree Resorts Inc., Ashville Comfort Inn River Ridge, and other properties)

Re: House Files 1707, 1720, and blank bill yet to be drafted all referencing New Hanover County Occupancy Taxes

I am here today with Mary Baggett Martin of the Blockade Runner Hotel on Wrightsville Beach. We bring you petitions from hotel and lodging owners across New Hanover County. There is great concern among the owners of these properties regarding the two written bills and the blind bill waiting form. We have discussed our opposition to these bills since their initial unveiling months ago. We have asked to be part of the dialogue in their development. The local industry has not been included. In fact the tax collectors have been avoided in the development of both bills with the exception of a single briefing session by Representative McComas.

We oppose the passage of these bills for several reasons.

1. On the Macro level we believe that while we own and operate coastal and mountain lodging facilities that the coast and the mountains of North Carolina are natural and fiscal assets of the state and its people. They need to be managed and supported by the state and its institutions. Their infrastructure and maintenance needs to come from the broad based revenue sources of the state rather than from the lodging industry alone. Occupancy taxes are targeted taxes and in New Hanover County those taxes come from the lodging facilities out of the pockets of North Carolinians visiting the coast and mountains and the lodging facilities themselves. Contrary to public opinion they are taken out of the bottom line of our revenue. Mary can speak to that.

   In surveys conducted by I.E.& C. Inc. for the town of Carolina Beach over the summer of 2001 and the 2002 review of occupancy lists from lodging owners on Wrightsville Beach this summer, we find that the mix of tourists to New Hanover County coastal areas is over 75 percent North Carolina residents. This is unlike the northeastern counties of the outer banks that draw from Virginia and the northeast corridor of the US.

   When we talk about supporting tourism through occupancy taxes in New Hanover County we are talking about further taxation of our own states taxpayers. It is just one more tax paid by the individual NC taxpayers. It is a single industry tax. Our industry group has been willing to bear that burden providing that the bulk of the revenue generated is used to increase tourism, thus generating more revenue through secondary spending during the tourists visit. These bills will not have that effect.

   The three beaches requesting this legislation do so out of a desire to pay for such infrastructure items as parking, beach cleanup and street maintenance, and other items

associated with quality of life issues not tourism. We recognize the beaches needs but do not see the occupancy tax as the vehicle for fulfilling that need by virtue of the very policy set up by the House Finance Committee in structuring the Occupancy tax.

2. The lack of collaboration on this legislation further illustrates the problems that exist within the planning process of the county regarding tourism and its development. The City, County, and beach Municipalities cannot agree on the benefits of the tourism industry. Wrightsville and Kure Beaches have taken the course of developing a dominant residential base and limiting the future development of the business community. They have a tendency to say tourism also should be limited in their communities. At the same time Carolina Beach is going through a struggle on the same topic, but it tends to move toward encouragement of tourism related businesses. They have more open policies toward business. The Beaches do not have a history of working well together or working well with the city of Wilmington whose interest in their occupancy tax is purely to fund a convention / civic center in downtown Wilmington.

3. Historically, New Hanover County has reserved 60% of its occupancy tax for beach nourishment, which has served us well. The funds from our occupancy tax have grown and been used to replenish the counties beaches. The result is that the county has been able to sustain and repair itself more rapidly than other coastal area across the country after being struck by major hurricanes. We have documented that the federal match for beach nourishment is about to change from a 65%/35% match to a 35%/65% match. That would mean that the state and county would need to come up with an additional 30% of the funding for beach nourishment on the three beaches. We believe that the economy of the area is very dependent on the viability of those beaches. We see the need to keep the second 3% of occupancy tax capability as our rainy day resource, should that change occur in the federal budget. The accompanying articles indicate the volatility of that federal budget as being requested by the Bush administration.

   While we believe that the beach and mountains should be viewed as natural assets of the state, we are not at all confident that the state would have the resources to fund the additional amount needed to do maintenance to our beaches. In fact the state has borrowed money from the county for their portion of the current nourishment maintenance. We would support an additional 3% occupancy tax if it were to follow the existing 60% for beach nourishment 40% for tourism development formula that has been in place longer than any other occupancy tax in the state. We think that there is no reason to change a working formula.

4. We agree that the City of Wilmington may want a convention center for their downtown development as an anchor, or a performing arts center or a civic center, which is what is really being proposed, based on the size and accessibility of the proposed facility. We understand that the beaches have increased demands on their lands, streets, garbage collection and water resources because of the increased use by tourists getting to the beach. We see those as infrastructure needs that are not included in the definitions currently agreed upon statewide for the use of occupancy taxes. Many of these infrastructure issues are quality of life issues. Some would argue that these should come from property taxes. Unfortunately, we are the largest tax payer of either property tax or occupancy taxes.

We would be willing to work with New Hanover County, Wilmington, and the beach communities in seeking an across the board revenue stream such as a localized sales tax or surcharge tax or a multi-revenue source bill, but not a single industry tax in a year in which our

occupancy is down some 7 to 20 percent depending on the property. These reductions in occupancy are a result of the layoffs in the state and the national crisis caused by 9/11/01.

With NC State Legislature looking for areas for budget cuts in every publicly funded area to balance the states budget, it seems illogical to allow passage of a tax on the single most hard hit industry with the exception of the airlines in the aftermath of 9/11. In addition to the fact that the proposed legislation does not meet the criteria established for the passage of such legislation. The requested changes included in Mr. Honeycutt's memo and in the board minutes of the Town of Wrightsville Beach all reflect their position for the request of additional funds.

In the first reading of the proposed legislation at the Town of Wrightsville Beach reading the statement was made that the beach really didn't need the money at the moment but wanted to make certain that it couldn't be used by anyone other than the beach. Ladies and gentlemen we feel our rainy day is better protected by the option for a second 3% occupancy tax being left for later passage than in the control of any one of these entities currently vying for control of that tax.

Wilmington Star News 7/11/02

White House says locals need to fund beach renewal projects

Document questions use of federal tax money on beaches

Cox News Service

WASHINGTON | Local taxpayers should bear most of the cost of expensive beach "renourishment" projects such as one being considered in Martin County, Florida, according to White House budget analysts.

In an undated memorandum, the White House Office of Management and Budget (OMB) questioned Army Corps of Engineers assumptions that national taxpayers enjoy the primary benefit of dredging sand from the sea floor and using it to restore eroded beaches.

The main beneficiaries of the projects are local interests, the document said, and local taxpayers should bear most of the cost.

The memorandum was attached to comments by an environmental group, Public Employees for Environmental Responsibility (PEER), opposing a request by Martin County that the corps renourish 3.7 miles of shoreline along Hutchinson Island.

In addition to environmental concerns, which PEER and other environmental organizations have raised unsuccessfully in objecting to other Florida beach renourishment projects, the group argues that if it approves the Martin County project, the corps would be "bucking" White House skepticism about the value of the projects.

The corps has not made a decision on the Hutchinson Island renourishment proposal. A spokesman declined to comment on the PEER statement or the OMB memorandum because they have not been officially made public by the White House.

The appearance of the OMB memorandum in the Martin County case could signal a new strategy by beach renourishment opponents. Instead of concentrating on environmental concerns, such as the effect the projects are thought to have on coral reefs, opponents could attempt to shift costs to local taxpayers.

"As Martin County is the second wealthiest county in the state of Florida, one might think that local taxpayers are paying for these expensive beach renourishment projects," PEER stated. "After all, it is the local economy that is bolstered by the real estate and tourism industries the renourishment projects 'protect.' "

Referring to the OMB document, PEER said the corps "should defer to its commander in chief and cease all beach renourishment projects."

PEER lawyer Dan Meyer said his organization obtained the OMB memorandum from an Internet site maintained by a Washington lobbying firm, Marlowe and Co., whose clients include several Florida communities that seek federal aid for beach restoration projects.

Colin Bell, a Marlowe and Co. lobbyist, said the company also had posted a lengthy Corps of Engineers cost-benefit study that sought to justify the expense of beach restoration. Mr. Bell said OMB skepticism over the national value of restoration projects was nothing new.

"The White House has been moving away from these projects since at least the middle of the Clinton administration," he said. "Every time, Congress soundly rejects their arguments and votes to fund beach restoration, because it is important to the national economy."

Room tax on state's agenda

Leaders in Raleigh attempt to write bill to benefit all

By Mark Schreiner
Raleigh Bureau Chief
mark.schreiner@wilmingtonstar.com

Raleigh - State Reps. Thomas Wright and Danny McComas are discussing changes to a bill that would boost the tax on hotel rooms in New Hanover County to provide money for a downtown convention center for Wilmington and money for tourism improvements in the beach towns.

Rep. Wright, a Wilmington Democrat, said Thursday he was preparing changes to a hotel-tax bill he submitted earlier this summer that would divide revenues from a 3-cent increase among Wilmington, Wrightsville Beach, Carolina Beach and Kure Beach. The new language would also send a portion of hotel-tax revenues to a tourism development authority, an idea missing from the first draft, if the General Assembly should choose to create one for New Hanover County.

Rep. Wright said he will formally submit his revisions next week.

Representatives of the N.C. Travel and Tourism Coalition criticized the original bill because it was vague on how the new revenue would be spent and did not put control with an agency charged with promoting tourism in the region.

Coalition official Gerry Hancock could not be reached Thursday for comment.

Rep. Wright suggested that Rep. McComas, a Republican who sits on the finance subcommittee that oversees occupancy tax bills, find another bill that could be amended to include language creating the tourism development authority.

"The new bill sets the tax," said Rep. Wright. "His bill could set up the TDA."

Revenues from New Hanover County's current 3 percent hotel tax are divided between tourism promotion through the Cape Fear Region Convention and Visitors Bureau and a county that pays for beach renourishment.

"I think we could make (Rep. Wright's plans) work," Rep. McComas said. "But we have to be careful and see that the guidelines regarding occupancy taxes are respected."

Government and business officials have tried several times over the past seven decades to build a new convention center in downtown Wilmington, but the most

earnest effort has been over the past four years.

A committee appointed by Mayor Hamilton Hicks put a new convention center at the top of a list of civic projects. A task force created by Mayor David Jones selected a site and proposed a sales tax on hotel rooms to pay for the project.

In 2001, the needed legislation never got through a General Assembly focused on budget issues and legislative redistricting.

Mayor Harper Peterson and Councilman Frank Conlon revived the issue this summer with a City Council resolution asking for a hotel-tax increase to provide money for tourism-related projects, including a new convention center.

In the new draft of his bill, revenue set aside for Wilmington would accrue for three years while the City Council drafted a tourism development plan that could include building a convention center.

"We're going to need that time to come up with a good plan," Mr. Peterson said. "We don't want to go after this thing willy-nilly."

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Paying the bills

happen on the Atlantic Intracoastal Waterway from Virginia to Miami, Fla., and the stretch along Florida's west coast north from Naples. He proposed little to no money for dredging those waterways, arguing that commercial traffic is too light to justify the expense.

Members of Congress have a history of bucking presidents when they try to cut water projects.

The House Energy and Water subcommittee added $8 million to Atlantic waterway maintenance on Wednesday, mostly to waterways in North Carolina and between Jacksonville, Fla., and Miami. Advocates for the waterways say that will help, but it's still not enough.

Southeastern senators, including Democrat Bob Graham of Florida, expressed their concerns about the Atlantic waterway in a letter to the corps' military commander, Gen. Robert Flowers. They recently got his response: a grim portrait of expensive problems.

For example, just to maintain the status quo in North Carolina would cost $7 million a year, and much more to restore the depth to 12 feet. North Carolina would get $4 million under the appropriations bill in the House, down from $5 million this year. Florida waterways on the Atlantic would need almost $8 million a year to keep current depths. Appropriators so far have allotted half that amount.

The story was worse for Georgia and South Carolina, which would get $178,000 and $264,000 respectively in the House bill, practically none of it for dredging.

The waterway on Florida's Gulf Coast is another story.

From Naples to St. Joseph Sound, operation and maintenance funding for the Intracoastal Waterway is $1 million this year, which isn't much. Local officials say at least 400,000 cubic yards of sand should be removed. Mr. Bush had recommended nothing, an amount he repeated in his proposal for next year's budget.

It's not clear if the House panel added money for that route or for the Gulf Intracoastal Waterway from the Panhandle through Alabama, Louisiana and Texas, which fared better under the Bush plan because of heavy shipping traffic. The energy and water appropriations bill is mostly secret until the full Appropriations Committee considers it, which could happen this week. Some numbers, such as those for the Atlantic waterways, have leaked out.

In many places, nature is clearly outpacing the Corps of Engineers.

The Atlantic waterways haven't received enough money to keep them at their original 12-foot depths for many years. Funding began to decline further under President Clinton, and Mr. Bush has waged a determined war on water projects.

The corps doesn't count hundreds of thousands of recreational boaters and commercial fishermen when reporting the use of waterways to the administration. It uses cargo tonnage as its measure of commercial value, which is the only justification the administration considers. Ms. Cason, the Sarasota fleet operator, was surprised to learn her business isn't acknowledged.

"A boat that does that for a living and carries our tourists safely when they come to town, they don't count that?" she asked. "If we're not considered commercial, then there is no commercial in Sarasota."

Rep. McIntyre argues that tourism and recreation on the waterways is just as vital to the local, national and North Carolina economies.

"Every way you look at it, from the recreational angle, the commercial angle, they all result in a growing and prosperous economy," said Rep. McIntyre, who supports a bill that would force the corps to weigh recreational values more heavily.

Rep. Sonny Callahan, the Alabama Republican who is chairman of the Energy and Water Subcommittee, said he sides with Mr. Bush philosophically. But he said that as long as Congress has authorized waterway maintenance, those projects should get money. "The inland waterway is crucial to our commerce," he said. "They had to have more money. We gave it to them."

That's been the attitude in Congress for years, but boaters complain of heavy losses from damage.

Joe McClash, chairman of Florida's West Coast Inland Navigational District and a Manatee County commissioner who is an avid sailor, said he's worried someone will get killed running aground off Sarasota.

"It's just dangerous," he said. "Somebody's going to get hurt because you expect the waterways to be acceptable to navigation."

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Navigable waters

Money, Mother Nature are keys to an Intracoastal Waterway ships can use

By Gareth McGrath
Staff Writer

WRIGHTSVILLE BEACH - It's a battle the Army Corps of Engineers has been fighting for years – keeping the Intracoastal Waterway navigable while struggling with inadequate financial support from Washington.

Although not a perfect situation, the agency has been able to muddle through.

"We are behind every year. We're always playing catch-up," said Bob Sattin, chief of navigation for the corps' Wilmington district. "We're never in an advanced maintenance stage."

But the department was able to keep most of the waterway's "hot spots" under control, often using emergency funds or money from other district projects to clear shoaled areas after the allocated dredging money had run dry.

In 2000, the Wilmington district received $5.5 million for waterway dredging. It spent $6.4 million.

Last year it received $5.83 million but spent $8.6 million.

This fiscal year it was $4.9 million, and that's all the corps will spend, Mr. Sattin said.

"This year we don't have any extra project funds to transfer out of," he said.

The result is a growing list of problem areas up and down the waterway with little chance of improvement without a major increase in funding or more cooperation from Mother Nature.

Both possibilities seem highly unlikely.

The White House claims the 1,100-mile waterway has outlived its purpose as an inland channel offering safe passage for military and cargo traffic.

Facts seem to back up the administration's stance, although waterway backers say they aren't valid because the waterway's substantial recreational traffic isn't counted.

According to the corps' statistics on inland waterway traffic, 3.1 million tons of cargo

was moved on the Intracoastal Waterway, excluding the area south of Jacksonville, Fla., in 2000. The figure represents a decline of nearly 7 percent from 1999.

That compares to 114 million tons of cargo moved during the same time period on the Gulf Intracoastal Waterway and 236 million tons on the Ohio River.

Even the Allegheny River in Pennsylvania carried more cargo in 2000 – 3.8 million tons – than the Intracoastal Waterway.

Matching its funding commitment to the waterway's level of commercial traffic, the administration allocated less than $1 million in its 2003 proposed budget to maintain North Carolina's 308 miles of waterway.

Waterway proponents claim the administration's view is too narrow, ignoring the Intracoastal's value as a recreational asset, tourism draw and economic generator.

Mike Bradley, director of N.C. Marine Trades Service, said the 225 marinas along the coast and North Carolina's 100 boat-building companies employ thousands and pump millions into the state's economy.

Other benefits include expanded and rejuvenated municipal waterfront areas and housing developments along the waterway's edges.

"It's such a big industry, and we're just now getting under way to try and quantify it," Mr. Bradley said of the economic impact tied to the waterway, "but there's no question it's astronomical."

Locally, there are 12,000 registered boats in New Hanover County – one for every 14 residents.

Include Pender and Brunswick boat owners and that number surges to nearly 25,000.

Except for some traffic on the area's rivers, nearly all of those boats either travel on the waterway or use it in transit to the Atlantic – and that traffic doesn't include interstate boaters passing through.

Recently, cruise companies also have been using the waterway to travel the Eastern Seaboard, including some stopping in downtown Wilmington.

The waterway also is important for the coast's quality of life, as an environmental asset and even as a source of sand for eroded beaches, Intracoastal Waterway supporters claim.

Citing the waterway's importance to their communities and constituents, coastal Congress members have been able to restore maintenance funding most years that the administration has tried to cut it.

Congress again this year appears ready to ride to the rescue.

A key House subcommittee, on which Rep. Mike McIntyre, D-N.C., serves, has recommended $4 million for maintenance dredging and several million more for dredging some problem inlets, where heavy shoaling requires them to be dredged nearly every year.

The corps had wanted at least $6 million for waterway dredging in North Carolina.

Although the waterway has an authorized navigable depth of 12 feet, the corps has been struggling to keep the channel depth in North Carolina at around 9 feet.

While noting that his tugboat captains are lucky to find 8 feet of draft in most places, Steve Furlough, president of Virginia-based C&P Tug and Barge Co., said the situation is getting untenable.

"It's getting worse, especially in Bogue Sound and some of the inlets that go out to the sea," he said. "Some of those areas we can only cross in a rising tide."

Mr. Furlough said the shallow water is putting a strain on profits, since it often takes longer to get places while carrying less cargo.

That leads to less barge traffic – further strengthening the administration's argument that the waterway is a white elephant.

Mr. Sattin doesn't want to get involved in politics or justifications for continued federal support for waterway maintenance.

But he said it's simply not feasible to expect the waterway to continue to be a navigable channel without regular dredging.

"We already have serious problems," he said. "Not doing anything is going to add to those problems, and very quickly."

Chris Willis, owner of Wrightsville Beach-based Sea Tow, a towing and rescue company, said he knows what would happen if the corps stopped dredging.

"It will boost our business for sure," he said. "But that's not the type of business we want."

With tidal currents and unpredictable weather, Mr. Willis said officials need to understand the waterway isn't a static creation like a building or a road.

Just letting the waterway go, and not expecting repercussions, simply isn't feasible.

"Mother Nature doesn't stop," Mr. Willis said. "It keeps going every minute of the day."

Gareth McGrath: 343-2384

gareth.mcgrath@wilmingtonstar.com

Real Estate DEVELOPMENT

Convention-center growth requires better feasibility studies

While effects of Sept. 11 have discouraged hotel developers from overbuilding in most U.S. marketplaces, there's a splurge of publicly-funded convention-center construction.

Dozens of cities throughout the country are building new convention centers or enlarging old ones. For example, Pittsburgh is expanding with a new $354-million, 330,000-square-foot center on the banks of the Allegheny River. With this addition, Pittsburgh hopes to protect its current business and to attract national conventions.

However, like many other cities, Pittsburgh might be fighting a losing cause. The convention-center and trade-show industry enjoyed double-digit growth in attendance in the late '80s and [illegible]s, but that has slowed [illegible]ally since 1997. Attendance declined in 2001, even before Sept. 11.

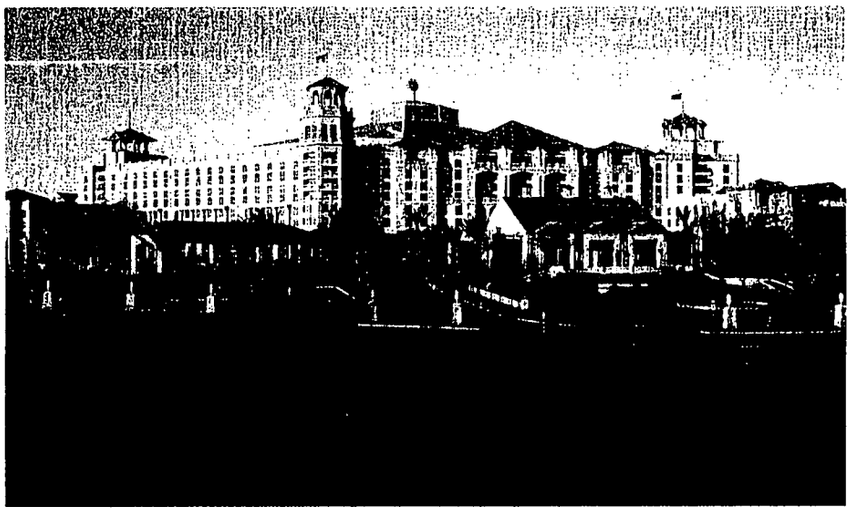
Robert A. Baade, a professor of economics at Lake Forest (Ill.) College who has analyzed the economic impact of convention centers, stadiums and casinos said, "To a significant degree, it's folly. They're ignoring what other cities are doing, and they're doing it at their own peril. They could be left with a lot of white elephants."

Convention-center executives said cities must build or expand to keep up with the competition to maintain market share. The drive for new and expanded centers extends from New York to San Diego. The list of cities that have built varies widely: High Point, N.C.; Grand Forks, N.D.; Charleston, W.Va.; Columbus, Ohio; San Antonio; Seattle; and Portland, Ore. According to *Tradeshow Week*, the new construction brings the total to about 60 million square feet of exhibition space at 347 locations.

Boston, Washington and Kissimmee, Fla., are planning extensive additions, and three dozen other cities are awaiting financing for new convention centers. New York's inadequate Jacob K. Javits Convention Center, which has 814,000 square feet, attracts only 6 percent to 8 percent of the market for the 200 largest shows compared with 22.3 percent for Las Vegas and 16 percent for Chicago. But New York is still trying to find ways to finance an addition to the Javits Center. While attendance has been slowing since 1997, it declined 10 percent in 2000 and another 7.4 percent in 2001, probably as a consequence of the recession, a slump in the technology sector and Sept. 11.

Meanwhile, some convention-center hotels are getting funded and built:

- In about 18 months, Houston will open a new 1,200-room convention-center hotel with the city's largest ballroom and hotel meeting space. The Houston Convention Center Hotel Corp. signed a 15-year agreement with Hilton Hotels Corp. to manage the hotel.
- Starwood Hotels & Resorts Worldwide is evaluating plans to split its long-delayed 1,100-room headquarters hotel at Boston's new convention center into two buildings and two phases.
- A Hilton Garden Inn was built on top of a parking garage at the Philadelphia Convention Center.
- The Mohegan Sun Convention Hotel opened in Uncasville, Conn., with 1,200 guestrooms and more than 100,000 square feet of meeting and exhibit space.
- The Gaylord Palms Resort and Convention Center opened in Kissimmee, Fla., in February with 1,406 guestrooms, 400,000 square feet of convention, meeting, exhibition and prefunction space and a 178,000-square-foot exhibition hall.

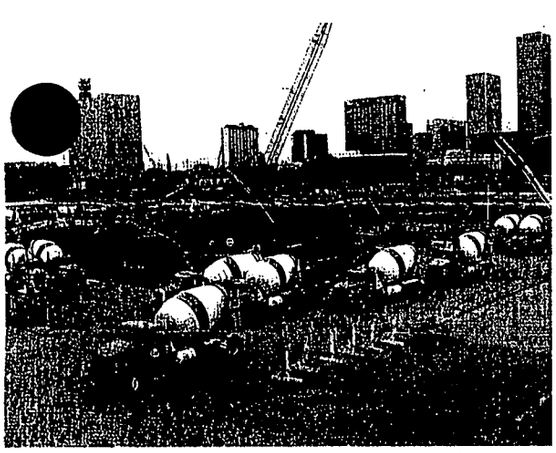


The new Gaylord Palms Resort and Convention Center opened in February in Kissimmee, Fla., and features 1,406 guestrooms and 400,000 square feet of convention, meeting, exhibition and prefunction space.

When supply exceeds demand, convention-center operators said they must subsidize convention hotels and operate the centers as loss leaders. Now that we know the 800-pound gorilla is back, what we really need are better feasibility studies that measure market demand and analyze competitive properties for these new hotels. These improved studies should:

- Analyze the trade-offs inherent in the yield-management decisions as they pertain to market penetration and revenue maximization.
- Assess realistic marketing expenses and genuine reserves for replacement.
- Analyze the relative profitability of the food-and-beverage outlets after allocation of all costs.
- Review the cost/benefit value of the franchise flag.
- Offer constructive criticism of the management contract regarding the relationship of fees to performance standards.
- Propose sensitivity analyses to enable owners to understand the range of alternatives under various assumptions of reasonableness and uncertainty.

hmm@advanstar.com



The 1,200-room convention-center hotel under construction in Houston is expected to open at the end of 2003. It will be managed by Hilton Hotels Corp.

Stanley Turkel is a hotel consultant who specializes in operational audits, asset management and litigation support services. He can be reached at (212) 838-5467 or stanturkel@aol.com.

New Hanover County Hotel/Motel Association

Serving the Local Lodging Industry

Resolution Opposing the Proposed Occupancy Tax Bills

WHEREAS, the accommodations and/or lodging industry, including cottage rentals, hotels, motels, attractions & suppliers located in New Hanover County have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9/11 reduction in travel and...

WHEREAS, the majority (over 75%) of tourists visiting New Hanover County are drawn from North Carolinians across the state and they are already paying for public recreational facilities; ie North Carolina beaches, aquariums, the Battleship North Carolina, etc. through their tax dollars, and further....

WHEREAS, this single industry tax is an unfair and regressive tax ultimately arriving at a total of 13% of the total charges if passed would cause significant unfair competition from neighboring states and other coastal communities having lower taxes, and...

WHEREAS, the Hotel/Motel Association of New Hanover County may or may not support an increase in occupancy tax, we do not support the current bills due to the fact that they would fragment the tourism dollars. Any bills present should meet the House Finance Guidelines and these bills do not conform and...

WHEREAS, the current bills include formation of four new Tourism Development Authorities, in addition to the current Cape Fear Coast Convention and Visitors Bureau, which would further fragment the tourism promotion dollars spent on promoting the area.

The New Hanover County Hotel/Motel Association, representing 37 properties, suppliers and attractions and over 1522 employees (who are eligible voters), do hereby oppose the current occupancy tax bills (HOUSE BILL 1707, HOUSE BILL 1720) and do hereby request our New Hanover County legislative delegation to remove all occupancy bills now under consideration by the legislature of North Carolina for this short session and until such time as a consensus can be developed as to the need for and distribution of such a tax. Such consensus being signaled by a joint approach to the legislature by our beach communities, Wilmington and New Hanover County with a single pre-approved plan for equal county-wide tourism promotion.

SIGNED BY:

Frank Jones

President Frank Jones

7/19/2002

Date

245 Eastwood Rd Wilmington NC

Address

910 793-1920

Telephone Number

William P Sisk

Witness

Post Office Box 1966, Wilmington, NC 28402
Phone: (910) 452-4200 Fax: (910) 763-2785
E-Mail: Newhchma@aol.com

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

WHEREAS, the majority (over 65%) of tourists visiting New Hanover County beaches are drawn from North Carolinians across the state and they are already paying both sales taxes and existing occupancy taxes to use their own beaches, and further...

WHEREAS, this single industry tax is an unfair and regressive tax ultimately arriving at a total of 13% of the total charges if passed would cause significant unfair competition from neighboring states and other coastal communities having lower taxes, and ...

WHEREAS, the state of North Carolina has not dedicated an ongoing state fund for Beach re-nourishment projects, leaving the current 60 beach nourishment and 40 percent tourism development split of the first three percent occupancy tax as the only buffer for the current Federal, State, and Local mix of moneys required to maintain our beaches, and that money is in jeopardy at the Federal and State level and it represents the only reserve for the beaches against catastrophic events, and ...

WHEREAS, the proposed increase in local occupancy taxes to 6% would not address the issue of beach nourishment money and will impact both users of the beaches and collectors of the new tax and...

WHEREAS, the current bills include formation of four new Tourism Development Authorities, in addition to the current Cape Fear Coast Convention and Visitors Bureau which would further fragment the tourism promotion dollars spent in the area,

I, the undersigned, do hereby oppose the current two occupancy bills (HOUSE BILL 1707, HOUSE BILL 1720) and do hereby request our New Hanover County legislative delegation to remove all occupancy bills now under consideration by the legislature of North Carolina for this short session and until such time as a consensus can be developed as to the need for and distribution of such a tax. Such consensus being signaled by a joint approach to the legislature by our beaches, Wilmington, and New Hanover County with a single pre-approved plan for equal county wide tourism promotion.

SIGNED:

Annie Bryant Peterson
NAME

June 27-2002
DATE

Silver Gull Motel
BUSINESS

20 East Salisbury St
ADDRESS

Wrightsville Beach
TELEPHONE NUMBER

910-256-33 3728

WITNESS

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Rebecca Dye

Rebecca Dye	6-27-02
NAME	**DATE**
Inn Keeper	5345 Market St Wilmington N.C. 2840
BUSINESS	**ADDRESS**
[signature]	910-799-4292
WITNESS	**TELEPHONE NUMBER**

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED: Somer Stahl

Somer Stahl
NAME

6/26/02
DATE

Surf Suites
BUSINESS

PO Box 489 711 S. Lumina Ave.
ADDRESS

Mary Webb Bassett
WITNESS

910-256-2275 - Wrightsville Beach
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED: Matthew T Johnson

Matthew T Johnson
NAME

June 26/02
DATE

Ocean View Motel
BUSINESS

17 E. Salisbury St WB 28480
ADDRESS

Mary Webb Bryatt
WITNESS

910 256-2743
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED:

Stephen L. Wright
NAME

6-26-02
DATE

CAROLINA TEMPLE APTS
BUSINESS

P.O. Box 525
550 WAYNICK BLVD.
ADDRESS

Mary B. Wright
WITNESS

(910) 256-2723
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED:

Glen Fidel, Jr.
NAME

6/26/02
DATE

Holiday Inn Oceanfront Resort
BUSINESS

1100 N. Lumina Wrightsville Beach
ADDRESS

Mary Hilton Bryant
WITNESS

910-256-2231 x 155
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED:

Ron Williams
NAME

June 25 02
DATE

One South Lumina
BUSINESS

1 South Lumina Ave
ADDRESS

Debbie Dickel
WITNESS

256-9100
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED: Mary Webber Baggett

Mary Webber Baggett
NAME

June 26 2001
DATE

Blockade Runner Beach Resort
BUSINESS

275 Waynick Blvd. P.O. Box 555
ADDRESS Wrightsville Beach

WITNESS

910-256-2251
TELEPHONE NUMBER

910-341-9223 (pager)

Resolution Opposing the Proposed Increase In Occupancy Tax

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WHEREAS, the state of North Carolina has not dedicated an ongoing state fund for Beach re-nourishment projects, leaving the current 60 beach nourishment and 40 percent tourism development split of the first three percent occupancy tax as the only buffer for the current Federal, State, and Local mix of moneys required to maintain our beaches, and that money is in jeopardy at the Federal and State level and it represents the only reserve for the beaches against catastrophic events, and ...

WHEREAS, the proposed increase in local occupancy taxes to 6% would not address the issue of beach nourishment money and will impact both users of the beaches and collectors of the new tax and....

WHEREAS, the current bills include formation of four new Tourism Development Authorities, in addition to the current Cape Fear Coast Convention and Visitors Bureau which would further fragment the tourism promotion dollars spent in the area,

I, the undersigned, do hereby oppose the current two occupancy bills (HOUSE BILL 1707, HOUSE BILL 1720) and do hereby request our New Hanover County legislative delegation to remove all occupancy bills now under consideration by the legislature of North Carolina for this short session and until such time as a consensus can be developed as to the need for and distribution of such a tax. Such consensus being signaled by a joint approach to the legislature by our beaches, Wilmington, and New Hanover County with a single pre-approved plan for equal county wide tourism promotion.

SIGNED: _____ 06/26/02

NAME **DATE**

_____ 1001 N Lumina Ave

BUSINESS **ADDRESS**

_____ 910 256-3764

WITNESS: **TELEPHONE NUMBER**

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED: Jim Wallace

NAME	**DATE** 6/27/02
BUSINESS INTRACOASTAL REALTY	**ADDRESS** 12 SHAD DR WRIGHTSVILLE BEACH NC
WITNESS:	**TELEPHONE NUMBER** 910 509 1921

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Sherrie VanEssendelft — June 26, 2002
NAME — DATE

Bryant Real Estate — 1020 N Lake Park Blvd
BUSINESS — ADDRESS

[signature] — 458-5658
WITNESS: — TELEPHONE NUMBER

TOTAL P.02

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED: Linda Burton — 6-26-02

NAME — **DATE**

Bryant Real Estate — 1020 N Lake Park Blvd

BUSINESS — **ADDRESS**

Linda Wood — 458-5658

WITNESS: — **TELEPHONE NUMBER**

TOTAL P.02

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Dale Wood — 6/26/02

NAME — DATE

Bryant Real Estate — 1020 N Lake Park Blvd

BUSINESS — ADDRESS

Linda Bat — 458-5658

WITNESS: — TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED:

Debbie Divers — 6-26-02

NAME — **DATE**

Bullard Realty, Inc — 1404 D. Lake Park Blvd.

BUSINESS — **ADDRESS**

Shane VanLoan — 910-458-4028

WITNESS: — **TELEPHONE NUMBER**

TOTAL P.02

FAX to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED: Simon McClure

NAME

6/26/02

DATE

DAVIES REALTY

BUSINESS

ADDRESS

Sherri VanCoevorden

WITNESS:

458-0494

TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Lenora M. Norris — 6-24-02

NAME — DATE

Coldwell Banker Sea Coast — 1001 No Lake Park Blvd

BUSINESS — ADDRESS

Denise Van Essendelft. — 910-458-4401

WITNESS: — TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

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SIGNED:

[signature]	6-26-02
NAME	DATE
Network Real Estate	1029 N. Lake Park Blvd.
BUSINESS	ADDRESS
[signature]	458-5654
WITNESS:	TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Cynthia S Hewes — 6-26-02

NAME — DATE

Network Real Estate — Carolina Beach NC

BUSINESS — ADDRESS

Stevie Van Cassendet — 458-5644

WITNESS: — TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Neal Johnson
NAME

6-26-02
DATE

Network Real Estate
BUSINESS

NETWORK REAL ESTATE
1029 N. LAKE PARK BLVD. #1
CAROLINA BEACH, N.C. 28428
ADDRESS

Laurie VanEssendelft
WITNESS

910 458 8562
TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

[signature]	6-26-02
NAME	**DATE**
Riptide, Inc.	511 Peninsula Dr
BUSINESS	**ADDRESS**
Sherrie VanLesserdeep	458-6029
WITNESS:	**TELEPHONE NUMBER**

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Billy McMillan — NAME

6-26-02 — DATE

Walker Seale — BUSINESS

501 N. Lake Park Blvd. Carolina Beach, N.C. — ADDRESS

Denise VanGosen — WITNESS:

910 458-3386 — TELEPHONE NUMBER

TOTAL P.02

Fax # 458-0193

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Thomas O Tucker
NAME

6-26-07
DATE

Tucker Bros Realty Co.
BUSINESS

701 Harper Ave, Carolina Beach NC 28428
ADDRESS

Gloria Van Essendelft
WITNESS:

910/458-8211
TELEPHONE NUMBER

TOTAL P.02

FAX to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Kevin Labelle — 6-27-02

NAME — DATE

Carolina Beach Realty — 307 N Lake Park Blvd

BUSINESS — ADDRESS

Stevie VanEssendelft — 910-458-4444

WITNESS: — TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

WHEREAS, the majority (over 65%) of tourists visiting New Hanover County beaches are drawn from North Carolinians across the state and they are already paying both sales taxes and existing occupancy taxes to use their own beaches, and further...

WHEREAS, this single industry tax is an unfair and regressive tax ultimately arriving at a total of 13% of the total charges if passed would cause significant unfair competition from neighboring states and other coastal communities having lower taxes, and ...

WHEREAS, the state of North Carolina has not dedicated an ongoing state fund for Beach re-nourishment projects, leaving the current 60 beach nourishment and 40 percent tourism development split of the first three percent occupancy tax as the only buffer for the current Federal, State, and Local mix of moneys required to maintain our beaches, and that money is in jeopardy at the Federal and State level and it represents the only reserve for the beaches against catastrophic events, and ...

WHEREAS, the proposed increase in local occupancy taxes to 6% would not address the issue of beach nourishment money and will impact both users of the beaches and collectors of the new tax and....

WHEREAS, the current bills include formation of four new Tourism Development Authorities, in addition to the current Cape Fear Coast Convention and Visitors Bureau which would further fragment the tourism promotion dollars spent in the area,

I, the undersigned, do hereby oppose the current two occupancy bills (HOUSE BILL 1707, HOUSE BILL 1720) and do hereby request our New Hanover County legislative delegation to remove all occupancy bills now under consideration by the legislature of North Carolina for this short session and until such time as a consensus can be developed as to the need for and distribution of such a tax. Such consensus being signaled by a joint approach to the legislature by our beaches, Wilmington, and New Hanover County with a single pre-approved plan for equal county wide tourism promotion.

SIGNED:

Linda L. Gardner — NAME

6/26/02 — DATE

Gardner Realty + Mgmt Inc. — BUSINESS

1002 N. Lake Park Blvd — ADDRESS

Irene VanLeuvenhaven — WITNESS:

910-458-8503 — TELEPHONE NUMBER

TOTAL P.02

Fax to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and..

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SIGNED:

Susan Clontz — 6/26/02

NAME — **DATE**

Century 21 Castle Realty — 1006 S Lake Park Blvd

BUSINESS — **ADDRESS**

Steve Vanlessendorf — 800 360 8225 910-458-8224

WITNESS: — **TELEPHONE NUMBER**

TOTAL P.02

FAX to 458-0093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Elizabeth Carder (mw)

Elizabeth Carder
NAME

06-26-02
DATE

Guy Johnson Motel
BUSINESS

P.O Box 476
235 Carolina Beach North Carol. 28428
ADDRESS

Mary Wetton Bryant
WITNESS

910-458-8105
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Natalie French

Natalie French
NAME

June 27, 2002
DATE

SeaWitch Motel & Cafe
BUSINESS

224 Carolina Ave., N
ADDRESS Carolina Beach, NC 2842

Mary Webb Bagett
WITNESS

910-458-8564
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Mary Ann Warwick

Mary Ann Warwick — 6-27-02

NAME — **DATE**

Liberty Mart Mgr at Cabana De Mar — 31 Carolina Beach NC

BUSINESS — **ADDRESS** Carolina Beach 28428

Mary Webb Bagett — 910 458 4456

WITNESS — **TELEPHONE NUMBER**

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED:

Sharon Walker

NAME SHARON WALKER

WALKER REALTY

BUSINESS

Mary Weston Baggett

WITNESS

6-26-02

DATE

501 No. LAKE PARK BLVD.

ADDRESS CAROLINA BEACH

910-458-3388

TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

WHEREAS, the majority (over 65%) of tourists visiting New Hanover County beaches are drawn from North Carolinians across the state and they are already paying both sales taxes and existing occupancy taxes to use their own beaches, and further...

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SIGNED:

Sharon Walker
NAME SHARON WALKER

6-26-02
DATE

Savannah Inn
BUSINESS

316 CAROLINA AVE. NO.
ADDRESS CAROLINA BEACH

Mary Webber Bryant
WITNESS

910-458-6555
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Joy-Lee

Joy Lee (Nona Kelly)
NAME

6/26/02
DATE

Joy-Lee Apartments
BUSINESS

P.O. BOX 552
317 Carolina Ave, North Carolina Beach 28428
ADDRESS

Mary Webb Baggett
WITNESS

910 458 8361
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: James W. Pope

James W. Pope
NAME

6/27/02
DATE

P.O. Box 759
1211 S. LAKE PARK BLVD. CAROLINA BEACH 28428
ADDRESS

Golden Sands Motel
BUSINESS

910-458-8334
TELEPHONE NUMBER

Mary Webb Bagwell
WITNESS

FAX 458-3093

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Joseph Willoughby

Joseph Willoughby
NAME

06-28-02
DATE

Beach House Inn + Suites
BUSINESS

412 Carolina Beach Ave. N.
ADDRESS Carolina Beach NC 28428

Mary Catherine Bassett
WITNESS

910-458-5557
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED:

Willard S. Buffkin
NAME WILLARD S. BUFFKIN, JR.

Surfside Motor Lodge
BUSINESS

Mary Wetherington
WITNESS

6-27-2002
DATE

234 CAR. BCH. AVE. N., CAR. BCH, NC 28428
ADDRESS

(910) 458-8338
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED:

Willard S. Bufkin Jr.
NAME WILLARD S. BUFKIN JR.

6-27-2002
DATE

DOLPHIN LANE MOTEL
BUSINESS

318 CAR. BCH. AVE. N. CAR. BCH., N.C. 28428
ADDRESS

Mary Webb Bufkin
WITNESS

(910) 458-5594
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED:

Willard S. Bufkin, Jr.
NAME WILLARD S. BUFKIN, JR.

6-27-2002
DATE

PARADISE INN
BUSINESS

310 CAR. BCH. AVE. N., CAR. BCH., NC 28428
ADDRESS

Mary Webb Bufkin
WITNESS

(910) 458-8264
TELEPHONE NUMBER

Resolution Opposing the Proposed Increase In Occupancy Tax

WHEREAS, the accommodations and / or lodging industry, including cottage rentals, hotels, and motels located on Wrightsville Beach, NC have suffered reductions in occupancy due to the failing North Carolina economy and the aftermath of 9.11 reduction in travel and...

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SIGNED: Ron Clark

RON CLARK GM — 6/26/02

NAME — **DATE**

SUMMER SANDS SUITES — 104 SOUTH LUMINA AVENUE

BUSINESS — **ADDRESS**

Mary Wetherington Bruggett — WRIGHTSVILLE BEACH, NC 2848

WITNESS — **TELEPHONE NUMBER**

910 256 4175

1800 336 4849

001 (07/00) S-08 USE THIS INTERNATIONAL AIRWAYBILL FOR SHIPMENTS TO EUROPE

1 Sender Account Number 195946073 | **Preprint Format No.** 95252738

FROM (Company) HOLIDAY INN SUNSPREE 5246

Street Address 1706 N LUMINA AVE

City WRIGHTSVILLE BEACH | **State** NC | **ZIP CODE (Required)** 28480

Sent by (Name/Dept) | **Phone (Required)** (910-256-2231

2 TO (Company) PLEASE PRINT NEATLY REPRESENTATIVE DANIEL F. McCOMAS

Street Address AIRBORNE CANNOT DELIVER TO P.O. BOX 606 LEGISLATIVE OFFICE BLDG

City (MUST BE U.S. CITY, STATE & ZIP CODE) RALEIGH | **State** NC | **ZIP CODE (Required)** 27601

Attention: (Name/Dept) D. McCOMAS | **Phone (Required)** (919)7335786

Description RESOLUTIONS

Sender's Signature | **Airborne Signature** | **Date**

3 Payment Sender will be billed unless marked otherwise — Bill to: Receiver ☐ 3rd Party ☐ — Account # (Required if 3rd Party)

☐ Paid in Advance — Check No. — Amount

Billing Reference (will appear on invoice)

Origin MYR | **Airbill Number** 5158631682

5 # of Pkgs 1 | **6 Weight(LBS)** REQUIRED — SUBJECT TO CORRECTION | **7 Packaging** (One box must be checked) ☑ Letter Express ☐ Express Pack ☐ Other Packaging

Special Instructions

☐ **Saturday Delivery** Extra charge Express only Not available to all locations ☐ Hold at Airborne

☐ Lab Pack Service ☐

Declared Value ☐ or **Asset Protection** ☐ $ .00 — **Shipment Valuation**

Thank You for Shipping with Airborne!

4 Service Type One box must be checked. Assumed Express unless noted.

- Express (Letter - 150 lbs) ☒
- Next Afternoon (Letter - 5 lbs) ☐
- Second Day (Letter - 150 lbs) ☐

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS, SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

AIRBORNE EXPRESS.

PO BOX 662, SEATTLE, WA 98111-0662

1-800-247-2676

www.airborne.com

SENDER'S COPY

---

001 (07/00) S-08 USE THIS INTERNATIONAL AIRWAYBILL FOR SHIPMENTS TO EUROPE

1 Sender Account Number 195946073 | **Preprint Format No.** 95252738

FROM (Company) HOLIDAY INN SUNSPREE 5246

Street Address 1706 N LUMINA AVE

City WRIGHTSVILLE BEACH | **State** NC | **ZIP CODE (Required)** 28480

Sent by (Name/Dept) | **Phone (Required)** (910-256-2231

2 TO (Company) PLEASE PRINT NEATLY REPRESENTATIVE DEWEY L. HILL

Street Address AIRBORNE CANNOT DELIVER TO P.O. BOX 1309 LEGISLATIVE BLDG

City (MUST BE U.S. CITY, STATE & ZIP CODE) RALEIGH | **State** NC | **ZIP CODE (Required)** 27601

Attention: (Name/Dept) DEWEY L. HILL | **Phone (Required)** (919)7335830

Description RESOLUTIONS

Sender's Signature | **Airborne Signature** | **Date**

3 Payment Sender will be billed unless marked otherwise — Bill to: Receiver ☐ 3rd Party ☐ — Account # (Required if 3rd Party)

☐ Paid in Advance — Check No. — Amount

Billing Reference (will appear on invoice)

Origin MYR | **Airbill Number** 5158632286

5 # of Pkgs 1 | **6 Weight(LBS)** REQUIRED — SUBJECT TO CORRECTION | **7 Packaging** (One box must be checked) ☐ Letter Express ☑ Express Pack ☐ Other Packaging

Special Instructions

☐ **Saturday Delivery** Extra charge Express only Not available to all locations ☐ Hold at Airborne

☐ Lab Pack Service ☐

Declared Value ☐ or **Asset Protection** ☐ $ .00 — **Shipment Valuation**

Thank You for Shipping with Airborne!

4 Service Type One box must be checked. Assumed Express unless noted.

- Express (Letter - 150 lbs) ☒
- Next Afternoon (Letter - 5 lbs) ☐
- Second Day (Letter - 150 lbs) ☐

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS, SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

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SENDER'S COPY

1 Sender Account Number: 195946073 | Preprint Format No: 95252738

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): 910-256-2231

2 TO (Company) PLEASE PRINT NEATLY

REPRESENTATIVE EDD NYE

Street Address: 639 LEGISLATIVE OFFICE BLDG.

AIRBORNE CANNOT DELIVER TO P.O. BOX

City: RALEIGH | State: NC | ZIP CODE (Required): 27601

THIS MUST BE A CITY, STATE & ZIP CODE

Attention: (Name/Dept) | Phone (Required): (919)7335477

Description: EDD NYE

RESOLUTIONS

Sender's Signature | Airborne Signature | Date

3 Payment: Sender will be billed unless marked otherwise. Bill to: Receiver ☐ 3rd Party ☐ Account # (Required if 3rd Party)

Origin: MYR | Airbill Number: 5158631586

☐ Paid in Advance | Check No. | Amount

Billing Reference (will appear on invoice)

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED SUBJECT TO CORRECTION | 7 Packaging: Letter Express ☑ | Express Pack ☐ | Other Packaging ☐ (One box must be checked)

Special Instructions

☐ Saturday Delivery — Extra charge Express only. Not available to all locations

☐ Hold at Airborne

☐ Lab Pack Service

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation $ .00

Thank You for Shipping with Airborne!

4 Service Type — One box must be checked. Assumed Express unless noted.

- Express (Letter - 150 lbs) ☐
- Next Afternoon (Letter - 5 lbs) ☒
- Second Day (Letter - 150 lbs) ☒

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS, SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

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001 (07/00) S-08 www.airborne.com

SENDER'S COPY

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1 Sender Account Number: 195946073 | Preprint Format No: 95252738

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): 910-256-2231

2 TO (Company) PLEASE PRINT NEATLY

SENATOR REVER CLARK

Street Address: 625 LEGISLATIVE OFFICE BLDG

AIRBORNE CANNOT DELIVER TO P.O. BOX

City: RALEIGH | State: NC | ZIP CODE (Required): 27601

THIS MUST BE A CITY, STATE & ZIP CODE

Attention: (Name/Dept) | Phone (Required): (919)7153034

Description: REVER CLARK

RESOLUTIONS

Sender's Signature | Airborne Signature | Date

3 Payment: Sender will be billed unless marked otherwise. Bill to: Receiver ☐ 3rd Party ☐ Account # (Required if 3rd Party)

Origin: MYR | Airbill Number: 5158632183

☐ Paid in Advance | Check No. | Amount

Billing Reference (will appear on invoice)

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED SUBJECT TO CORRECTION | 7 Packaging: Letter Express ☑ | Express Pack ☐ | Other Packaging ☐ (One box must be checked)

Special Instructions

☐ Saturday Delivery — Extra charge Express only. Not available to all locations

☐ Hold at Airborne

☐ Lab Pack Service

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation $ .00

Thank You for Shipping with Airborne!

4 Service Type — One box must be checked. Assumed Express unless noted.

- Express (Letter - 150 lbs) ☐
- Next Afternoon (Letter - 5 lbs) ☒
- Second Day (Letter - 150 lbs) ☒

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS, SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

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1 Sender Account Number: 195946073 | Preprint Format No.: 95252738

3 Payment: Sender will be billed unless marked otherwise | Origin: MYR | Airbill Number: 5158632080

Bill to: Receiver ☐ 3rd Party ☐ | Account # (Required if 3rd Party)

☐ Paid in Advance | Check No. | Amount

4 Service Type — One box must be checked. Assumed Express unless noted.
- Express (Letter - 150 lbs) ☒
- Next Afternoon (Letter - 5 lbs) ☒
- Second Day (Letter - 5 lbs) ☒

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): (910-256-2231

Billing Reference (will appear on invoice)

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED — SUBJECT TO CORRECTION | 7 Packaging — One box must be checked: Letter Express ☒ | Express Pack ☐ | Other Packaging ☐

2 TO (Company) PLEASE PRINT NEATLY: SENATOR R.C. SOLES, JR

Street Address: AIRBORNE CANNOT DELIVER TO P.O. BOX
2022 LEGISLATIVE BLDG

City: MUST BE U.S. CITY, STATE & ZIP CODE: RALEIGH | State: NC | ZIP CODE (Required): 27601

Attention: (Name/Dept): R.C. SOLES, JR | Phone (Required): 9197335963

Description: RESOLUTIONS

Special Instructions
- ☐ Saturday Delivery — Extra charge, Express only, Not available to all locations
- ☐ Hold at Airborne
- ☐ Lab Pack Service
- ☐

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation: $ .00

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS. SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

Sender's Signature | Airborne Signature | Date

Thank You for Shipping With Airborne!

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001 (07/00) S-08 USE THE PREPRINTED AIRBILL FOR SHIPMENTS TO THE U.S. AND CANADA

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1 Sender Account Number: 195946073 | Preprint Format No.: 95252738

3 Payment: Sender will be billed unless marked otherwise | Origin: MYR | Airbill Number: 5158631984

Bill to: Receiver ☐ 3rd Party ☐ | Account # (Required if 3rd Party)

☐ Paid in Advance | Check No. | Amount

4 Service Type — One box must be checked. Assumed Express unless noted.
- Express (Letter - 150 lbs) ☒
- Next Afternoon (Letter - 5 lbs) ☒
- Second Day (Letter - 5 lbs) ☒

Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): (910-256-2231

Billing Reference (will appear on invoice)

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED — SUBJECT TO CORRECTION | 7 Packaging — One box must be checked: Letter Express ☒ | Express Pack ☐ | Other Packaging ☐

2 TO (Company) PLEASE PRINT NEATLY: SENATOR PATRICK BALLANTINE

Street Address: AIRBORNE CANNOT DELIVER TO P.O. BOX
1127 LEGISLATIVE BLDG

City: MUST BE U.S. CITY, STATE & ZIP CODE: RALEIGH | State: NC | ZIP CODE (Required): 27601-2808

Attention: (Name/Dept): P. BALLANTINE | Phone (Required): (919) 715-2525

Description: Resolutions

Special Instructions
- ☐ Saturday Delivery — Extra charge, Express only, Not available to all locations
- ☐ Hold at Airborne
- ☐ Lab Pack Service
- ☐

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation: $ .00

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS. SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

Sender's Signature | Airborne Signature | Date

Thank You for Shipping With Airborne!

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001 (07/00) S-08 USE THE PREPRINTED AIRBILL FOR SHIPMENTS TO THE U.S. AND CANADA

www.airborne.com — SENDER'S COPY

1 Sender Account Number: 195946073 | Preprint Format No.: 95252738

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): 910-256-2231

2 TO (Company) PLEASE PRINT NEATLY: REPRESENTATIVE E. DAVID REDWINE

Street Address: AIRBORNE CAN NOT DELIVER TO P.O. BOX
635 LEGISLATIVE OFFICE BLDG

City (MUST BE U.S. CITY, STATE & ZIP CODE): RALEIGH | State: NC | ZIP CODE (Required): 27601

Attention: (Name/Dept): E. DAVID REDWINE | Phone (Required): (919)7335829

Description: RESOLUTIONS

Sender's Signature | Airborne Signature | Date

3 Payment: Sender will be billed unless marked otherwise
Bill to: Receiver ☐ 3rd Party ☐ | Account # (Required if 3rd Party)
☐ Paid in Advance | Check No. | Amount
Billing Reference (will appear on invoice)

Origin: MYR | Airbill Number: 5158631785

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED (SUBJECT TO CORRECTION) | 7 Packaging (One box must be checked): Letter Express ☑ | Express Pack ☐ | Other Packaging ☐

Special Instructions
☐ Saturday Delivery — Extra charge, Express only, Not available to all locations
☐ Hold at Airborne
☐ Lab Pack Service
☐

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation $ .00

Thank You for Shipping with Airborne!

4 Service Type — One box must be checked. Assumed Express unless noted.
Express (Letter - 150 lbs) ☐
Next Afternoon (Letter - 5 lbs) ☐
Second Day (Letter - 5 lbs) ☐
Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

ABSENT A HIGHER SHIPMENT VALUATION, CARRIER'S LIABILITY IS LIMITED TO $100 PER PACKAGE, OR ACTUAL VALUE, WHICHEVER IS LESS, SPECIAL OR CONSEQUENTIAL DAMAGES ARE NOT RECOVERABLE. SEE TERMS AND CONDITIONS ON REVERSE SIDE OF THIS NON-NEGOTIABLE AIRBILL. SCAC-AIRB FED I.D. NO. 91-0837469

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001 (07/00) S-08 USE THE INTERNATIONAL AIRWAYBILL FOR SHIPMENTS TO AND FROM THE U.S. AND BETWEEN OTHER COUNTRIES
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SENDER'S COPY

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1 Sender Account Number: 195946073 | Preprint Format No.: 95252738

FROM (Company): HOLIDAY INN SUNSPREE 5246

Street Address: 1706 N LUMINA AVE

City: WRIGHTSVILLE BEACH | State: NC | ZIP CODE (Required): 28480

Sent by (Name/Dept) | Phone (Required): 910-256-2231

2 TO (Company) PLEASE PRINT NEATLY: REPRESENTATIVE THOMAS WRIGHT

Street Address: AIRBORNE CAN NOT DELIVER TO P.O. BOX
528 LEGISLATIVE OFFICE BLDG

City (MUST BE U.S. CITY, STATE & ZIP CODE): RALEIGH | State: NC | ZIP CODE (Required): 27601

Attention: (Name/Dept): THOMAS WRIGHT | Phone (Required): 919733575[illegible]

Description: RESOLUTIONS

Sender's Signature | Airborne Signature | Date

3 Payment: Sender will be billed unless marked otherwise
Bill to: Receiver ☐ 3rd Party ☐ | Account # (Required if 3rd Party)
☐ Paid in Advance | Check No. | Amount
Billing Reference (will appear on invoice)

Origin: MYR | Airbill Number: 5158631881

5 # of Pkgs: 1 | 6 Weight(LBS) REQUIRED (SUBJECT TO CORRECTION) | 7 Packaging (One box must be checked): Letter Express ☑ | Express Pack ☐ | Other Packaging ☐

Special Instructions
☐ Saturday Delivery — Extra charge, Express only, Not available to all locations
☐ Hold at Airborne
☐ Lab Pack Service
☐

Declared Value ☐ or Asset Protection ☐ | Shipment Valuation $ .00

Thank You for Shipping with Airborne!

4 Service Type — One box must be checked. Assumed Express unless noted.
Express (Letter - 150 lbs) ☐
Next Afternoon (Letter - 5 lbs) ☐
Second Day (Letter - 5 lbs) ☐
Next Afternoon over 5 lbs charged at the Express rate. Next Afternoon to Bold Red destinations only.

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MINUTES

OCCUPANCY TAX SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON FINANCE
SEPTEMBER 18, 2002
ROOM 425, LOB
10:30 a.m.

The Chair of the Subcommittee, Representative Mary Jarrell, called the meeting to order. Members present were Representatives Alexander and McComas, along with Staff person, Trina Griffin. The Agenda and Visitor Registration Sheet are attached and made part of these minutes.

The first bill considered by the subcommittee was **HB 1707, BEACH TOWNS ROOM TAX**, sponsored by Representative McComas. Representative McComas offered an amendment to amend the bill on page 2, lines 19-21, and page 6, lines 3-7. Representative Alexander moved to have the amendment rolled into a Proposed Committee Substitute (PCS). The motion carried. Representative McComas offered a PCS for consideration. The PCS, as amended, consisted of three parts. The first part affected the beach towns of Carolina Beach, Kure Beach, and Wrightsville Beach. The second part modified the county's current authority to levy a 3% occupancy tax. The third part prohibited a convention center in New Hanover County from entering into a contract with a hotel requiring the hotel to pay fees or commissions to the convention center based on accommodations furnished to convention participants. Representative Jarrell stated that the bill spoke to beach nourishment and the definitions were fine. She made a motion to give the PCS, as amended, a favorable report and recommendation to the full Finance Committee. The motion was adopted. Copies of the Amendment and PCS are attached as part of these minutes.

The next bill considered was **HB 1720, Wilmington Occupancy Tax,** sponsored by Representative Wright. Representative Wright was not present and Trina Griffin gave a summary of the bill. If New Hanover County created a Tourism Development Authority (TDA), then the City of Wilmington would be authorized to levy a 3% room occupancy tax. New Hanover County would create a convention center account, with the county remitting the net proceeds of the tax to that account. At the end of three years, the City of Wilmington must demonstrate to the TDA that all

financing and development arrangements for a convention center were completed. If not, the revenues generated up to that time and the balance in the convention center account would be forwarded to the TDA. The TDA could use the funds to promote travel and tourism. Ms. Griffin had spoken with Representative Wright and he was in agreement with the PCS. Upon motion by Representative Alexander, the PCS was given a favorable report and recommendation to the Finance Committee. The Proposed Committee Substitute is attached as part of these minutes.

The House Finance Committee would hear both bills on September 19, 2002. If Representative Wright had several amendments for HB 1720, then that bill would be re-referred to the subcommittee.

The meeting adjourned at 11:00 a.m.

Respectfully submitted,

Mary L. Jarrell

Representative Mary Jarrell, Chair

Blinda Edwards

Blinda Edwards
Committee Assistant

AGENDA
Occupancy Tax Subcommittee
Of the House Committee on Finance
September 18, 2002
10:30 a.m.
Room 425 LOB

Representative Mary Jarrell, Chair

CALL TO ORDER

BILLS TO BE HEARD

HB 1707 **Beach Towns Room Tax- Representative McComas**

HB 1720 **Wilmington Occupancy Tax-Representative Wright**

ADJOURNMENT

VISITOR REGISTRATION SHEET

OCCUAPANCY TAX SUBCOMMITTEE-
HOUSE FINANCE
Name of Committee

SEPTEMBER 18, 2002
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carol Laween	EOHS
Jim Hobbs	NCHLA
[signature]	EGHS

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT

House Bill 1707

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

H1707-ASV-109 [v.1]

Date September 18 ,2002

Comm. Sub. [YES]
Amends Title [NO]
First Edition

Representative McComas

moves to amend the bill on page 2,line 19-21, by rewriting the lines to read:

"(4) Tourism Development Authority or Authority. – The Cape Fear Coast Convention and Visitors Bureau created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.";

and on page 6, lines 3-7, by rewriting the lines to read:

"Sec. 34. Establishment of the Cape Fear Coast Convention and Visitors Bureau as a Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating the Cape Fear Coast Convention and Visitors Bureau, a tourism development authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

9/18

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1707
PROPOSED COMMITTEE SUBSTITUTE H1707-CSLCx-110 [v.3]

9/17/2002 4:45:19 PM

Short Title: New Hanover Beach Towns Tourism Act. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TOURISM DEVELOPMENT FOR THE NEW HANOVER BEACH TOWNS, TO PROVIDE FOR THE ESTABLISHMENT OF A TOURISM DEVELOPMENT AUTHORITY, AND TO CONFORM ADMINISTRATIVE PROVISIONS OF THE NEW HANOVER COUNTY LAW TO GENERAL LAW.

The General Assembly of North Carolina enacts:

NEW HANOVER BEACH TOWNS TOURISM DEVELOPMENT ACT

SECTION 1.(a) This section applies only to the towns of Carolina Beach, Kure Beach, and Wrightsville Beach.

SECTION 1.(b) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the governing body of a beach town may, by resolution, levy a local occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

SECTION 1.(c) Administration. – New Hanover County shall collect and administer on behalf of each beach town the tax the town levies under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(d) Distribution and Use of Tax Revenue. – The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax levied by each beach town under this section to the Tourism Development Authority for deposit to a separate account for that beach town. The Authority shall use at least one-half of the funds in

each beach town account to promote travel and tourism in that beach town and shall use the remainder in each beach town account for tourism-related expenditures in that beach town. Before spending any funds in a beach town account for promoting travel and tourism or for tourism-related expenditures, the Authority must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of Tourism Development Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

SECTION 2. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for

filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, and Washington, to the Towns of Beech Mountain, Carolina Beach, Carrboro, Kure Beach, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, ~~and Wilkesboro,~~Wilkesboro, and Wrightsville Beach, and to the municipalities in Avery and Brunswick Counties."

MODIFY NEW HANOVER COUNTY ADMINISTRATIVE PROVISIONS

SECTION 3. Section 36.1 of Chapter 908 of the 1983 Session Laws is recodified as Section 32(b) of Chapter 908 of the 1983 Session Laws.

SECTION 4. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, Chapters 726 and 971 of the 1985 Session Laws, Chapter 540 of the 1995 Session Laws, and Section 3 of this act, reads as rewritten:

"Part VIII. New Hanover Occupancy Tax.

"Sec. 31. Levy of Tax. – (a) Two-percent Tax. – The New Hanover County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"~~Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied under this Part shall be~~ levy a room occupancy tax of two percent (2%) of the gross receipts derived from the rental of any accommodations within the county that are subject to ~~room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%)~~ sales tax imposed by the State under ~~G.S. 105-164.4(3).~~ G.S. 105-164.4(a)(3). This tax is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

(b) Additional One-percent Tax. – In addition to the tax authorized by ~~Sections 31 and 32 of this Part,~~ subsection (a) of this section, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under ~~those sections.~~that subsection. The levy, collection, administration, and repeal of the tax authorized by this ~~section,~~ subsection, and the use of tax revenue from a tax levied under this ~~section,~~subsection, shall be in accordance with Sections 31 through ~~36~~ 35 of this Part. New Hanover County may not levy a tax under this ~~section~~ subsection unless it also levies a tax under ~~Sections 31 and 32 of this Part.~~ subsection (a) of this section.

"Sec. 32. Definitions. – The following definitions apply in this Part:

(1) Beach nourishment. – The placement of sand, from other sand sources, on a beach or dune by mechanical means and other associated activities that are in conformity with the North Carolina Coastal Management Program along the shorelines of the Atlantic Ocean of North Carolina and connecting inlets for the purpose of widening the beach to benefit public recreational use and mitigating damage and erosion from storms to inland property. The term includes expenditures for any of the following:

a. Costs directly associated with qualifying for projects either contracted through the U.S. Army Corps of Engineers or otherwise permitted by all appropriate federal and State agencies.

b. The nonfederal share of the cost required to construct these projects.

c. The costs associated with providing enhanced public beach access.

d. The costs of associated nonhardening activities such as the planting of vegetation, the building of dunes, and the placement of sand fences.

(2) Beach towns. – Carolina Beach, Kure Beach, and Wrightsville Beach.

(3) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(4) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(5) Tourism-related expenditures. – Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in an area by attracting tourists or business travelers to the area. The term includes tourism-related capital expenditures and beach nourishment.

"Sec. 33. Administration of Tax. – A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this act.~~(a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars ($10.00) for each day's omission.~~

~~(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.~~

~~(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars ($1,000) or by imprisonment not to exceed six months, or both.~~

~~(e) In the event that a penalty or additional tax as a penalty is imposed upon or added to the tax levied under this Part, as prescribed in subsections (b) and (c) above, the Board of Commissioners of New Hanover County, upon petition of the taxpayer or~~

~~his agent, may compromise, settle, or adjust the county's claim for the penalties imposed.~~

"Sec. 34. Tourism Development Authority. – (a) Creation. – As soon as practicable before February 1, 2003, the board of commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The county shall transfer to the Authority upon its creation all the assets of the county's convention and visitors bureau.

(b) Membership. – The Authority shall be composed of the following 15 voting members: 5 ex officio members or their designees and 10 additional members appointed by the board of commissioners.

(1) The ex officio members are listed below. Each ex officio member may designate to serve in their place an individual who is actively involved in promoting travel and tourism in the local community the member represents or who owns or manages a lodging facility in the local community the member represents.
   a. The chair of the board of county commissioners.
   b. The mayor of the City of Wilmington.
   c. The mayors of the beach towns.

(2) The board of county commissioners shall appoint the members listed below. The resolution creating the Authority must provide for staggered terms for the appointed members.
   a. The owner or manager of a hotel of 150 rooms or more in the town of Wrightsville Beach. This individual must have experience in promoting travel and tourism.
   b. The owner or manager of a hotel in the town of Carolina Beach and the owner or manager of a hotel in the town of Kure Beach. These individuals must have experience in promoting travel and tourism.
   c. The owner or manager of a hotel of 150 rooms or more in the City of Wilmington. This individual must have experience in promoting travel and tourism.
   d. The owner or manager of a hotel of fewer than 150 rooms in the City of Wilmington. This individual must have experience in promoting travel and tourism.
   e. The owner or manager of a bed and breakfast facility. This individual must have experience in promoting travel and tourism.
   f. The owner or manager of a company that manages and rents more than 100 vacation rental properties. This individual must have experience in promoting travel and tourism.
   g. A representative of a tourism attraction in the county who is actively involved in the promotion of travel and tourism in the county.

h. A representative of the Wilmington Chamber of Commerce who is actively involved in promoting travel and tourism in the county.

i. The owner or manager of a restaurant business in the county.

(c) Administration. – The board of commissioners shall determine the compensation, if any, to be paid to members of the Authority. The resolution creating the Authority must designate one member of the Authority to serve as the initial chair. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. During the first quarter of each calendar year beginning in 2004, the Authority must meet to elect a chair from among its members. The Finance Officer for New Hanover County shall be the ex officio finance officer of the Authority.

(d) Duties. – The Authority shall expend the net proceeds of the taxes distributed to it for the purposes provided by law. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(e) Reports. – The Authority shall report quarterly and at the close of the fiscal year on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. It shall file these reports with the board of commissioners and with the governing body of each municipality in the county.

~~Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.~~

~~This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

"Sec. 35. Disposition of Taxes Collected. ~~(a)~~ – New Hanover County shall distribute the net proceeds of the occupancy ~~tax~~ taxes levied under Section 31 of this Part as ~~follows:~~provided in this section:

(1) Sixty percent (60%) of the net proceeds shall be deposited in a special fund, the cash balance of which shall be deposited at interest or invested in accordance with G.S. ~~159-30; and~~ 159-30. These funds shall be used only for beach nourishment.

(2) Forty percent (40%) of the net proceeds shall be distributed on a quarterly basis to the ~~county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 of Chapter 105 of the General Statutes are distributed.~~Tourism Development Authority. These funds shall be used only to promote travel and tourism

throughout New Hanover County. These funds shall not be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

~~'Net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

~~Unless a change in the use of occupancy tax revenue is authorized pursuant to subsection (b), the revenue deposited in a special fund in accordance with subdivision (1) shall be used by the county to control beach erosion, and the revenue distributed between the county and its municipalities in accordance with subdivision (2) shall be used to promote travel and tourism. No revenue distributed under subdivision (2), however, may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.~~

~~(b) The purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of the votes cast in an election held in New Hanover County on the question of how revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.~~

~~The question of how revenue from the room occupancy tax should be spent may be submitted to the qualified voters of the county only at the time of a statewide general election. All elections under this section shall be conducted in accordance with the laws then governing elections in this State.~~

~~"Sec. 36. Repeal of Levy. (a) The board of commissioners may by resolution repeal the levy of the room occupancy tax in new Hanover County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.~~

~~(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~"

SECTION 5. G.S. 153A-155 reads as rewritten:

"**§ 153A-155. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to counties the General Assembly has authorized to levy room occupancy taxes.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing county a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing county shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the taxing county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the county finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing county has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a county may be repealed or reduced by a resolution adopted by the governing body of the county. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Anson, Brunswick, Buncombe, Cabarrus, Carteret, Craven, Cumberland, Currituck, Dare, Davie, Durham, Granville, Madison, Montgomery, Nash, New Hanover, Pender, Person, Randolph, Richmond, Rowan, Scotland, Stanly, Transylvania, Tyrrell, Vance, and Washington Counties, and to the Township of Averasboro in Harnett County."

SECTION 6. The amendments made by this act to Section 34 of Chapter 908 of the 1983 Session Laws, as amended, are effective when this act becomes law. The remainder of this act becomes effective February 1, 2003.

HOUSE BILL 1707:
New Hanover Beach Towns Tourism Act

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. McComas
Date:	September 18, 2002	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition		Committee Counsel
	H1707-CSLCx-110 [v.6]		

SUMMARY: ***The proposed committee substitute for House Bill 1707, given a favorable report by the Occupancy Tax Subcommittee, does the following things:***

- ***It authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax once the county has established a Tourism Development Authority. One-half of the proceeds are to be used for tourism promotion and the other half for tourism-related expenditures.***
- ***It requires the county to establish a Tourism Development Authority no later than February 1, 2003, and it specifies the membership of the Authority.***
- ***It conforms the administrative provisions of New Hanover County's current occupancy tax legislation to the uniform provisions concerning levy, administration, collection, repeal, and penalties.***
- ***It prohibits a convention center that is funded in whole or in part by occupancy tax proceeds from entering into a contract with a hotel that requires the hotel to pay a fee, penalty, commission, or other charge to the convention center based on accommodations furnished to individuals attending convention center functions. This provision only applies to convention centers in New Hanover County and the municipalities in New Hanover County.***

The section requiring the establishment of a Tourism Development Authority and the section regarding convention centers become effective when the act becomes law. The reminder of the act becomes effective February 1, 2003.

CURRENT LAW: Currently, the towns of Carolina Beach, Kure Beach, and Wrightsville Beach do not have authority to levy an occupancy tax. However, they do receive a portion of the occupancy tax proceeds levied by the county. Since 1985, New Hanover has had the authority to levy a 3% occupancy tax. Sixty percent (60%) of the total proceeds are deposited into a special fund to be used to control beach erosion. The remainder is distributed among the county and the municipalities in accordance with the method by which the 1% local sales and use taxes levied in the county are distributed and is used to promote travel and tourism.[1]

BILL ANALYSIS: The proposed committee substitute for House Bill 1707 has three parts. The first part affects the beach towns only, the second part modifies the county's current authority to levy a 3% occupancy tax, and the third part prohibits a convention center in New Hanover County from entering into a contract with a hotel requiring the hotel to pay fees or commissions to the convention center based on accommodations furnished to convention participants.

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[1] New Hanover uses an ad valorem method of local sales and use tax distribution.

I. Beach Towns Tourism Development Act

Rate – The bill authorizes each of the towns of Carolina Beach, Kure Beach, and Wrightsville Beach to levy a 3% occupancy tax once the county has established a Tourism Development Authority.

Administration – The county would collect the proceeds for each beach town and remit the funds, on a quarterly basis, to the TDA. The TDA will distribute the funds and must consult with the affected beach town regarding its needs for promoting travel and tourism and for tourism-related expenditures.

Use – 50% to promote travel and tourism; 50% for tourism-related expenditures.

II. Modify New Hanover County Administrative Provisions

Creation of a TDA – Currently, the county has a convention and visitors bureau (CVB), which was established without any authorizing legislation.

- The PCS requires the county to create the Cape Fear Coast Convention and Visitors Bureau, which shall act as a tourism development authority, as soon as practicable before February 1, 2003. Upon its creation, the county must transfer all of the assets of the convention and visitors bureau to the Authority.
- The TDA would consist of 15 voting members, with 5 *ex officio* members and 10 additional members appointed by the board of commissioners. The eight additional members would consist of 7 owners/operators of lodgings (hotels, bed and breakfast, and rental properties), 2 people actively involved in promoting tourism in the county, and 1 owner/operator of a restaurant.
- The intent of this legislation is for the current CVB to be converted into a Tourism Development Authority, but retain its current name as the "Cape Fear Coast Convention and Visitors Bureau."

Use –

- 60% - Under current law, New Hanover uses 60% of its occupancy tax proceeds to control beach erosion. The PCS changes the term to "beach nourishment," a defined term. These funds would continue to be deposited into a special account administered by the county.
- 40% - Under current law, the remaining 40% is distributed among the county and the municipalities and used to promote travel and tourism. Under the PCS, the use would remain the same but the funds would be remitted to and distributed by the TDA.

Uniform Administrative Provisions – It conforms the provisions regarding the levy, administration, collection and repeal of the county tax to the statutory provisions in G.S. 153A-155. Uniform statutory penalties also apply.

III. Limitation on New Hanover Convention Centers

- This section applies only to New Hanover County and municipalities in New Hanover County.
- The bill prohibits a convention center from entering into a contract with a hotel or lodging facility that requires the hotel or lodging facility to pay a fee, penalty, commission, or other charge to the convention center based on accommodations furnished to individuals attending convention center functions.
- It also prohibits a convention center from discriminating against a hotel or lodging facility that provides accommodations to individuals attending convention center functions based on the payment or nonpayment of fees, penalties, commissions, or other charges to the convention center.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1720
PROPOSED COMMITTEE SUBSTITUTE H1720-CSSVx-86 [v.3]

9/17/2002 6:37:05 PM

Short Title: Wilmington Occupancy Tax. (Local)

Sponsors:

Referred to:

June 13, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

SECTION 1. Occupancy tax. – (a) Authorization and Scope. – If New Hanover County has created a Tourism Development Authority pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended, the Wilmington City Council may, by resolution, levy a local occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

Before adopting a resolution levying a tax under this section, the Wilmington City Council must hold a public hearing on the question. The City Council must give at least 15 days' public notice of the hearing, including details on the proposed uses of the tax proceeds. After adopting the resolution, the City Council must immediately forward a copy of the resolution to the New Hanover County Board of Commissioners and the county manager. A tax levied under this subsection shall become effective no earlier than February 1, 2003.

SECTION 1.(b) Administration. – New Hanover County shall collect and administer a tax levied under this section. Except as otherwise provided in this section, a tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

SECTION 1.(c) Definitions. – The following definitions apply in this section:

(1) Downtown Wilmington. – The area consisting of the Central Business District, the National Register Historic District, and the area extending to the Holmes Bridge and the Cape Fear River in the city of Wilmington, North Carolina.

(2) Net proceeds. – Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(3) Promote travel and tourism. – To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(4) Tourism Development Authority or Authority. – The Authority created by New Hanover County pursuant to Part VIII of Chapter 908 of the 1983 Session Laws, as amended.

SECTION 1.(d) Use of Tax Revenue. – If a tax is levied under this section, New Hanover County shall create a convention center account. The county shall remit the net proceeds of a tax levied under this section quarterly to the convention center account. Funds in the account, including interest or investment income on the account, may be used only as provided in this subsection:

(1) The county shall hold the funds in the convention center account, including interest or investment income, until one or more of the conditions provided in this subsection have been met. When any of the conditions provided in subdivision (2), (3), or (4) of this subsection has been met, the proceeds shall be used as provided in that subdivision.

(2) If, at the end of three years after the first levy of a tax under this section, the City of Wilmington has not demonstrated to the satisfaction of a Tourism Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the Tourism Development Authority. Thereafter, all tax proceeds remitted to the convention center account shall be remitted quarterly to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism. For the purpose of this subdivision, completion of financing and development arrangements includes at a minimum obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(3) If, within three years after the first levy of a tax under this section, the City of Wilmington demonstrates to the satisfaction of a Tourism

Development Authority created by the county pursuant to a local act of the General Assembly that all financing and development arrangements for a convention center have been completed, the county shall remit all funds in the convention center account to the City of Wilmington. Thereafter, except as provided in subdivision (4) of this subsection, all tax proceeds remitted to the convention center account shall be remitted quarterly to the City of Wilmington. The City of Wilmington may use the funds only for construction, financing, operation, promotion, and maintenance of the convention center. For the purpose of this subdivision, completion of financing and development arrangements includes at a minimum obtaining financing commitments for construction, entering into contracts for construction and management, and securing the necessary land for the project.

(4) If the condition set out in subdivision (3) of this subsection has been met but within four years after the first levy of a tax under this section, the City of Wilmington fails to demonstrate to the satisfaction of the Tourism Development Authority that construction has begun on a convention center in Downtown Wilmington, then the city must return to the county any funds it received under this subsection that have not been spent or committed. The county shall use these funds and any tax proceeds remitted thereafter to the convention center account only to promote travel and tourism in the city. If the county has created a Tourism Development Authority pursuant to a local act of the General Assembly, the county must remit the funds and future tax proceeds to the Tourism Development Authority. The Authority shall use these funds only to promote travel and tourism in the city.

SECTION 1.(e) Reports. – Each entity responsible for administering and spending the proceeds of a tax levied under this section must each annually publish a detailed, audited report on its receipts and expenditures of the occupancy tax proceeds during the preceding year. The text of the report must be included in the minutes of the entity's governing body and placed on a public web site, and must be made available in hard copy upon request.

SECTION 2. City administrative provisions. – G.S. 160A-215, as amended by S.L. 2002-95, reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. – This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. – A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. – Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. – The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. – A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. – A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to Beech Mountain District W, to the Cities of Gastonia, Goldsboro, Greensboro, High Point, Kings Mountain, Lexington, Lincolnton, Lumberton, Monroe, Mount Airy, Shelby, Statesville, ~~and~~ Washington, and Wilmington, to the Towns of Beech Mountain, Carrboro, Jonesville, Mooresville, North Topsail Beach, Selma, Smithfield, St. Pauls, and Wilkesboro, and to the municipalities in Avery and Brunswick Counties."

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

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: **September 18, 2002**

TO: House Finance Committee

FROM: Linda Struyk Millsaps, Stephanie Schmidt
Fiscal Research Division

RE: HB 1720 PCS – Wilmington Occupancy Tax

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*** No General Fund Impact ***		
Wilmington/New Hanover County*	$555,208	$1,345,825	$1,359,283	$1,372,876	$1,386,605

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wilmington and New Hanover County.

EFFECTIVE DATE: When it becomes law, but the tax cannot be implemented before February 1, 2003.

BILL SUMMARY: If New Hanover County creates a Tourism Development Authority, then the City of Wilmington is authorized to levy a 3% room occupancy tax. The bill applies all the standard provisions regarding the collection of the funds. In addition, the bill instructs New Hanover County to create a convention center account, with the county remitting the net proceeds of the tax to that account. (The bill assumes the county will collect the tax for the City of Wilmington). If at the end of three (3) years the City of Wilmington has not demonstrated not the Tourism Development Authority that all financing

and development arrangements for a convention center have been completed, the revenues generated up to that time, the balance in the convention center account are forwarded to the Tourism Development Authority. The Authority is then instructed to use the funds to promote travel and tourism. All future occupancy tax revenues are to flow to the Authority. However, if the City is able to demonstrate within three years, to that satisfaction of the Authority, that all necessary arrangements are complete, the balance in the account will flow to the City of Wilmington to construct and operate a convention center. All future proceeds would also flow to the City for the same purpose, with one exception. If the city of Wilmington does not begin construction on a Downtown Wilmington convention center within one year of receiving the funds in the account, the unspent and uncommitted balance is to revert to the Authority, with all future funds also remitted to the TDA.

ASSUMPTIONS AND METHODOLOGY: It is assumed that the area will not see a decrease in its tourism industry or hotel occupancy rates due to the proposed legislation. The average room rate varies widely in Wilmington based on in and off-season tourism patterns. The proposed occupancy tax is levied against the gross receipt sales, thus revenues throughout the year could rise and fall with the seasonal room rates.

New Hanover County occupancy tax data were gathered from both the UNC-Wilmington Center for Business and Economic Services and the New Hanover County Finance Division. In fiscal year 2001-2002 New Hanover County collected $2.6 million from its 3% current occupancy tax. Wilmington is the largest municipality in the county, comprising approximately 50% of the population and industry in the area. The Cape Fear Coast Convention and Visitor's Bureau reports 7,365 rental units in New Hanover County, which includes 3,567 units in Wilmington. Thus, it is assumed that a Wilmington room tax would generate half of the revenue generated under the county tax at the same tax rate.

Fiscal Research typically increases occupancy tax estimates at an annual rate of 4%. However, a modest 1% annual growth rate is projected in Wilmington due to the fluctuating tourism industry in the area. Recent county annual revenues have increased (2000) and decreased (1999 and 2001) based on vacation trends, severe weather, and the economic situation in the country. Actual growth will vary depending on the economic recovery and local development and planning activities.

NOTE: The estimate for fiscal year 2002-03 assumes only five months of collections, as the bill specifics that the tax cannot be levied until February 1, 2003.

SOURCES OF DATA: Cape Fear Coast Convention and Visitor's Bureau; UNC-Wilmington Center for Business and Economic Services; New Hanover County Finance Division; City of Wilmington.

MINUTES

HOUSE COMMITTEE ON FINANCE

SUBCOMMITTEE ON HOUSE BILL 1630
August 29, 2002

The subcommittee for **HB 1630, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES**, met on the floor of the House Chambers after the adjournment of session on Thursday, August 29, 2002. Members present included Representative Wainwright (Chairman), Representatives Cox, Jarrell, and Johnson, and Gerry Cohen of Bill Drafting. The Chairman asked Mr. Cohen to meet with representatives of the Division of Motor Vehicles (DMV) and Jon Carr and Henry Jones of Jordan Price Wall Gray Jones & Carlton, to resolve some issues of concern to the committee. Those issues were concerning financial data on royalties, a decision on how to process initial applications, and the number of required applications before any plate was printed. Mr. Cohen would meet with the respective parties and report to the committee.

The Chairman adjourned the meeting.

Respectfully submitted,

Blinda Edwards
Committee Assistant

Representative William Wainwright
Chairman

HOUSE BILL 1630*

Short Title:	NASCAR Driver Theme Special Plates.	(Public)
Sponsors:	Representatives Dedmon, Goodwin (Primary Sponsors); and Cox.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. A series of plates bearing an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may enter into agreements with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of

War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Racing Theme	$35.00
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00.

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the

Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Racing Theme	$35	0	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0.

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – Before the Division develops or distributes a racing theme plate in this series, it may choose to require 100 prepaid applications for any NASCAR or NASCAR driver's or team's respective plate, or a deposit from any person seeking issuance of a plate of one thousand dollars ($1,000) per plate. If a deposit is made pursuant to this subsection, the Division shall refund the deposit once an equivalent amount of license plate fees is collected for the plate for which the deposit is made. If an equivalent amount is not collected within four years of the issuance of the first plate, the Division may retain the deposit. The Division may develop any plate in this series without a minimum number of applications or deposit if the person providing the State

with the license to use the words, logos, trademarks, or designs associated with the plate produces the plate for the State without a minimum order quantity. The cost of the racing theme special registration plate shall include the costs to produce blank plates for issuance by the Division, as provided in any agreement with the Division authorized by G.S. 20-79.4(b)(35a)."

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

MINUTES

HOUSE COMMITTEE ON FINANCE

SUBCOMMITTEE ON HOUSE BILL 1630
September 3, 2002

The subcommittee for **HB 1630, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES**, met at 3: 00 p. m. on Tuesday, September 3, 2002 in Room 420 of the Legislative Office Building. Members present included Representative Wainwright (Chairman), Representatives Cox, Jarrell, and Johnson. Staff person Gerry Cohen, Director of Bill Drafting, was also present. The Visitor Registration Sheet is attached as **Attachment 1.**

Representative Wainwright called the meeting to order. He stated that the subcommittee would report their findings to the full Finance committee. At the meeting on Tuesday, August 29, 2002, the members of the subcommittee had requested information from the interested parties concerning financial data on royalties, a decision on how to handle initial applications, and the number of required applications before any plate was printed. Gerry Cohen, the Department of Motor Vehicles (DMV), and the lobbyists representing Race Plate Marketing, LLC, had met to address those questions. An email from Gerry Cohen, dated August 29, 2002, outlined the details of that meeting. Please refer to **Attachment 2**. The Chair asked Mr. Cohen to give an update of that meeting.

Mr. Cohen stated that following the subcommittee meeting on Tuesday, August 29, 2002, a working group comprised of himself, Susan Coward and Diane Johnson of DMV, and Jon Carr and Henry Jones of Jordan Price Wall Gray Jones & Carlton, had met to discuss concerns of the subcommittee. Additional questions were asked of Mr. Jones and Mr. Carr concerning how the royalties were divided, what was the net to the state, how did that compare to other types of special plates, leaving it open for a minimum number of plates which put DMV in an uncomfortable position, and how were things being processed. The prior draft of the bill had a minimum number of 300 plates. The working group asked the applicant about a minimum of 100 per type of license plate, and the issue of the process. Race Plate Marketing is willing to handle the administrative duties for the first 100 applications, and they were willing to have a minimum of 100. Henry Jones and Jon P. Carr of Jordan and Price presented a proposal from their client, Race Plate Marketing, LLC, and the company's profit analysis and Proposed Committee Substitute. The fee to be charged for the Race Theme vanity plates was proposed at $30.00 The usage fee for the proprietary marks is 25% if that

$30.00, or $7.50. This is the standard fee as used in other states. The cost of the license plate, as provided by the Department of Corrections for embossing and packaging, is $4.00. The State's net share of the profit for the first year would be $18.50 and $22.50 beginning in the second year for that same plate. Please refer to

Attachment 3 for the full details of their proposal. The proposal would not allow the issuance of new plates after September 1, 2005. Those with existing plates could continue to purchase their plates. The PCS referred to professional stock car auto racing. NASCAR was not the only professional stock car auto racing. The proposal also had a sunset, which provided that no new plates would be issued after September 1, 2005. The sunset would allow time to assess whether it was a viable arrangement for the state. The General Assembly could extend or not extend the sunset.
Race Plate Marketing would issue the initial workload of 100 special plates. After the issuance by of that number, you would apply directly to DMV. There would be one plate issued, and you would get a renewal sticker each year.

The Chair recognized Carol Howard of DMV, Eddie Caldwell of the NC Sheriff's Association and the NC Law Enforcement Association, and Lieutenant Hunter of the NC Highway Patrol to speak on the bill. Ms. Howard stated that DMV did not oppose the issuance of the plate, but they were interested in consistency. They preferred the 300 minimum number for each plate. Mr. Caldwell stated that the concerns for the Associations that he represented were (1) that the tags have raised letters, and (2) that they have unique identifying letters so that law enforcement officers could distinguish them from other plates. They had no other concerns and no position on the bill. Lieutenant Hunter stated that the Highway Patrol had no opposition to the plate. They were concerned about the raised letters and the embossed coloring being readily identifiable by law enforcement.

Representative Wainwright explained to the committee that the total cost for the plate was fifty dollars, which included twenty dollars for the standard fee and thirty dollars for the specialty fee. If the plate was personalized, it could cost $70.00 or more. Mr. Cohen was asked to explain the changes in the Proposed Committee Substitute (PCS)and the original bill. He stated that the language in the PCS would implement what the applicant had proposed and there might be some wording changes. The committee could approve the PCS with the understanding that additional technical changes would be made by DMV before the PCS was presented to the committee. **The original bill, PCS, Bill Analysis, and Fiscal Note are included in Attachment 4.**

Mr. Henry Jones responded to questions concerning the number of drivers for these plates. He stated that currently there were 25 drivers, but others could be added. If someone dropped off the contract, the person who had purchased the plate could continue to renew the plate. There would be no additional plates issued for that driver.

Representative Cox asked if drivers who were not on the list of 25 would be allowed to get a plate. Mr. Jones replied that not as far as this program was concerned. The list of twenty-five drivers included the most popular drivers. Representative Cox asked if a driver could sue the state if their plate was not offered and they were a stockcar driver. Mr. Cohen asked Mr. Jones if a driver got clearing from NASCAR for licensing, would they go to DMV or would Race Plate Marketing be the sole provider of this. Mr. Jones stated that the statute leaves it open. The Chair stated that the bill needed to be explicit in the intent of the General Assembly as it relates to a law authorizing this stockcar racing plate. Mr. Cohen read the statute and it was his opinion that it would not be legal for the bill to say that only one person could contract the licensing. Representative Wainwright asked what would happen if another driver was able to get 100 applicants for his license plate. How would that driver get his plate added? Mr. Jones stated that the driver would have to get approval through NASCAR. Representative Dedmon asked if Race Plate Marketing was the sole licensee for NASCAR, and how long was their contract. If Race Plate Marketing loses its license, would this bill become moot? Mr. Cohen stated that if Race Plate Marketing lost their marketing agreement with NASCAR, part of the licensing would allow the individual to renew his plate. The drivers have granted in perpetuity the right to use their plate. Mr. Wainwright asked again how would we deal with a driver who is not included in the original 25 drivers, and he meets the minimum number of applicants to have his plate issued. Mr. Cohen stated that the driver would have to go to NASCAR. The Chair wanted to be comfortable that the contract agreement indicated that the State had no liability for any additional racing team or driver beyond those who were already licensed with Race Plate Marketing. Mr. Cohen asked Mr. Jones if the contract would state that DMV would refer any new inquiries/applicants to Race Plate Marketing. Mr. Jones agreed to include that wording in the contract.

Representative Wainwright stated that he wanted the General Assembly's intent concerning this bill to be clear. He did not want to leave how the contractual agreement would be worked out to DMV. He wanted the contractual language in the bill. He asked Ms. Howard what procedure DMV followed in contractual agreements. Ms. Howard stated that Division conferred with the Attorney General, and followed his recommendations. Any changes not acceptable to the Attorney General would need to be renegotiated. The language in the PCS would be changed to read that "The Division

may contract with any person" instead of The Division may enter into agreements with any person". Representative Wainwright stated that the committee would not vote on the bill today, and that Mr. Cohen would provide a new PCS with suitable language and legislatively appropriate. The following issues were to be resolved: the number of plates and the mechanics of who would take the initial application to have the plate printed. Representative Wainwright suggested that Mr. Jones Mr. Carr, Representatives Dedmon and Goodwin meet with Ms. Howard and DMV to work out the number of plates. The Chair stated that he was not sold on the minimum of 100 plates.

Mr. Jones and the bill sponsors stated that they appreciated the committee's diligence and careful consideration to resolve issues with the bill. The next meeting would be on Thursday, September 5, 2002.

The meeting adjourned at 3:40 p.m.

Respectfully submitted,

Blinda Edwards
Committee Assistant

Representative William L. Wainwright
Chairman

Attachment 1

VISITOR REGISTRATION SHEET

NASCAR DRIVER THEME
SPECIAL PLATE SUBCOMMITTEE — September 3, 2002
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Kost	NCFPC
Eddie Caldwell	NC Law Enf Off Assn / NC Sheriffs Assn
Greg McLeod	CCPS
Lt. Scott Hunter	NC State Highway Patrol
Carol Howard	DOT / DMV
Susan Conard	DOT/
Sharon Matthews	DOT/DMV
Jon Carr	Jordan Price
Henry Jones	" "

Blinda Edwards (Rep. Wainwright)

From: Gerry Cohen (Bill Drafting, Director)
Sent: Thursday, August 29, 2002 3:51 PM
: 'dianejohnson@dot.state.nc.us'; 'scoward@dot.state.nc.us'; 'hjones@jordanprice.com'; 'jcarr@jordanprice.com'
Cc: Rep. William Wainwright; Rep. Mary Jarrell; Rep. Andrew Dedmon; Rep. Joe Hackney; Rep. Linda Johnson; Rep. Wayne Goodwin
Subject: Racing Theme Plates

At the conclusion of today's subcommittee meeting on HB1630 Racing (NASCAR) theme plates, I met with Susan Coward and Diane Johnson of DMV and Jon Carr and Henry Jones of the Jordan Price law firm. At the request of chair Rep. William Wainwright, various isses were discuzssed, with the goal of reporting back to the subcommittee Tuesday afternoon.

Here are the issues discussed, possible resolution, and who is following up:

1) Financial data on royalties. Jordan Price to supply spreadsheet or other document showing estimated plate sales, estimated revenue based on the $30 plate fee shown in the draft, royalty to be paid, expenses to be born by royalty recipient (cost of plate blanks estimated $4), net to state, savings to state (no plate costs, save $1.50), extra expenses to state (reprogreaming one-time), also contract help if royalty recipient does not handle initial applications. DMV to get Jordan Price by Tuesday estimates of one time expenses, also cost of contract assistance if DMV handles initial applications. Spreadheet to cover first two years, so as to show one time expenses in first year (cost of plate and initial application processing). Spreadhseet to compare revenues for similar quantity of sales with those on other Sports Team plates (Carolina Panthers, revenue $10 per plate, DMV expenses $1.50 one time for each plate).

2) Decision on how to handle initial applications. Current DMV policy is that applicant handles initial 300 applications This is so the considerable burden of handling the first promotional efforts fall on the applicant, rather than DMV. This also leaves up to the aplicant the decsion on who gets the low numbered plates. DMV has consistently enforced this polcy with ll other groups, and only takes over handling initial applications after the first 300 come in. Here are the three ernatives. Jordan Price to see if applicant will do ALTERNATE 1 as thuis is least dirsuptive to DMV

ALTERNATE 1
Applicant responsible for initial applications and decisions on plate numbering for inital batch for each driver. If applicant had not planned to do this, applicant will adjust royalty estimates to reflect cost of processing. tHESE COSTS WILL BE SHOWN ON EXPENSE SPREADHSEET

ALTERNATE 2
Applicant will seek thrid party to handle this at no cost

ALTERNATE 3
DMV will handle this, will establish short-term contract position(s) to handle initial rush, DMV to recover these costs out of revenues from plate sales, these costs are to be shown in year 1 fiscal spreadsheet. Decisions on low numbers to either be done strictly by application time OR by DMV.

3) Minimum number of plates.
Jordan Pricee to ask applicant on position for requirement of 300 overall applications, but 100 for any one driver or 100 for NASCAR theme plate. This is more consistent with general DMV policy, and addresses chair's concern that DMV not be required to exercise discretion in waiving requirements.

Jon P. Carr

To: williamw@ncleg.net; maryj@ncleg.net; andrewd@ncleg.net; joeh@ncleg.net; lindajo@ncleg.net; wayneg@ncleg.net; lesliec@ncleg.net

Cc: choward@dot.state.nc.us; dianejohnson@dot.state.nc.us; scoward@dot.state.nc.us; gerryc@ncleg.net

Subject: House Finance Subcommittee on House Bill 1630 (Racing Theme Special Plates)

To: Members of House Finance Subcommittee on House Bill 1630 (Racing Theme Special Plates)

From: Henry Jones and Jon Carr

Date: September 2, 2002.

Re: House Bill 1630 (Racing Theme Special Plates)

At the Subcommittee meeting last week, Rep. Wainwright requested some financial information from our client, Race Plate Marketing, LLC with respect to potential revenues to the State. Attached you will find two documents which respond to Rep. Wainwright's request. Following the Subcommittee meeting last week, we had a productive discussion with Diane Johnson and Susan Coward, representing the Division of Motor Vehicles, and Gerry Cohen. Consistent with our discussion, please find attached a Proposed Committee Substitute for House Bill 1630 along with a summary of the changes to the First Edition of the bill. Our client has reviewed and approved the Proposed Committee Substitute.

cc: Carol Howard
Diane Johnson
Susan Coward
Gerry Cohen
Bob Brant

NC Profit Projection Overview ...

NC Profit Projections rev 0901...

HB.1630(com.sub).#4.doc

HB.1630(com.sub).summary.#4.do...

Jonathan P. Carr
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Race Theme License Plate Profit Potential Analysis Assumptions and Overview
(as prepared by Race Plate Marketing, LLC)

The attached spreadsheet presents the sales and potential profit projections for the Race Theme license plate program. The basis for the analysis is the same as used in other states and early trends would indicate these to be accurate assumptions. Questions relative to this analysis may be directed to Bob Brant, President, Race Plate Marketing, LLC.

Race Theme Plate Profit Basis

The fee to be charged for the Race Theme vanity plates is proposed at $30.00 each. The usage fee for the proprietary marks is 25% of that $30.00, or $7.50. This is the standard fee as is used in other states. The 25% fee is allocated two ways, depending on the Race Theme plate design:

- For all designs using race driver graphics, the fee is allocated at 23% to Race Plate Marketing, LLC and 2% to NASCAR.
- For the one NASCAR® stand-alone design plate, the fee is allocated at 11% to Race Plate Marketing, LLC and 14% to NASCAR.

The cost of the license plate as provided to Dept. of Corrections for embossing and packaging is $4.00. While we do not have access to current, actual costs of specialty plates in North Carolina, our experience would indicate this is not significantly different for a six-color graphic design vanity plate. After the proprietary marks usage fee, the state retains a gross profit of $22.50, less any other DMV administrative costs, for distribution to state agencies per statute guidelines. Our firm, Race Plate Marketing, LLC, serves as the marketing and administrative link between the drivers/teams and the states. We handle graphics development and changes, marketing activities, administrative responsibilities, legal and compliance issues, and general business activity. The company provides the required efficiency for state governments to work with multiple race team marketing programs and for those race teams to work with multiple state governments. We are experienced in all aspects of the licensing industry and have positive and productive relationships in all states with whom we currently work. States in which Race Plate Marketing, LLC currently has agreements in place include West Virginia, New York, Mississippi, and South Carolina. Legislation has also recently been passed in Virginia, where the company will establish the Race Plate program.

Scenario 1 (Uses WV Full Year Penetration as Basis)
The actual sales number in calendar year 2001 (first full year of sales) in the state of West Virginia was 15,291 plates or 1.063% of total vehicle registrations of 1,438,531 units. Using this same penetration percentage applied to the number of vehicles registered in North Carolina results in first full year sales potential of 78,932 units. Gross profit projections are determined using the above $22.50 per plate gross profit assumption.

Scenario 2 (Uses ESPN/Chilton Poll on North Carolina Race Fans as Basis)

An ESPN/Chilton sports poll conducted in 2000 indicated that in North Carolina, 49.3% of residents consider themselves race fans, ranking North Carolina as the highest per capita race fan state in the nation. The North Carolina result can be compared with a national average of 36.0%, with a range of 49.3% in North Carolina to 24.2% in New Jersey. Race fan penetration in the state of West Virginia, which was used as the basis in Scenario 1, is 45.0%.
For the purposed of this projection calculation, it is assumed that 3% of those 49.3% race fans in North Carolina purchase a Race Theme license plate. This number, while slightly higher than the West Virginia-based comparison number in Scenario 1, may be a more accurate projection for North Carolina, given the increased number of race fans.
The race fan penetration results, when used as a basis, indicate a sales potential of 95,066 units. Again, gross profit projections are determined using the above $22.50 per plate gross profit assumption.

Program Changes

In the event of a driver or graphics change on an issued Race Theme license plate, the procedure is as follows. Production of any new license plate in the old driver/design format will be discontinued. The state retains the right to use all issued plates and to issue any existing inventory. It is suggested that state residents be provided with the option of exchanging their plates for a new design, updating to the new design graphic, as is usually the trend in other industry-related product sales when a change in driver or design is implemented.

Program Comparisons

In North Carolina, there are currently 9,681 college/university vanity plates issued. As the above projections indicate, we would anticipate significantly more sales in the Race Theme vanity license plates. In support of this projection it should be noted that West Virginia, with approximately 20% of the auto registrations of North Carolina, issued 15,291 Race Theme license plates in their first full year of sales.
North Carolina colleges and universities receive $15.00 from the sale of each college-theme vanity plate. This can be compared to the $7.50 per plate marks usage fee that will be issued on the Race Theme license plate program.

Race Theme License Plate Profit Potential Analysis

(as prepared by Race Plate Marketing, LLC)

Race Theme Plate Profit Basis

Vanity Plate Charge	$30.00
Marks Usage Fee	$7.50
Gross Profit	$22.50

Note on manufacturing cost: Race Plate Marketing LLC to provide blank plate for embossing at cost of $4.00.
We are unaware of current actual costs of speciality plates but would not anticipate a significant difference here.

Scenario 1 Uses West Virginia Full Year Penetration as Basis

Actual 2001 (first full year) Race Theme plate sales in West Virginia was 1.063% of total vehicle registrations.
Year two gross profit projection anticipates 95% renewal penetration, providing continuous revenue stream to the state, plus 10% growth rate. Note: WV is showing a 25% growth trend in the second full year of their program.

NC Vehicle Registrations	Race Theme Plate Penetration	1st Full Year Sales Potential	Total Annual Sales	Annual Gross Profit Projection	2nd Year Gross Profit Projection
6,427,699	1.063%	68,326	$2,049,793	$1,537,345	$1,614,212

Scenario 2 Uses ESPN/Chilton Poll on North Carolina Race Fans as Basis

Poll indicates 49.3% of NC residents are race fans.
Race Theme Plate Penetration number assumes that 3% of those resident race fans purchase plate.
Year two gross profit projection uses same assumptions as Scenario 1 above, again, it is important to emphasize continuing revenue streams as residents renew their Race Theme plates each year.

NC Vehicle Registrations	Race Theme Plate Penetration	1st Full Year Sales Potential	Total Annual Sales	Annual Gross Profit Projection	2nd Year Gross Profit Projection
6,427,699	1.48%	95,066	$2,851,970	$2,138,978	$2,245,926

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

HOUSE BILL 1630*

PROPOSED COMMITTEE SUBSTITUTE

Short Title: Racing Theme Special Plates. (Public)
Sponsors: Representatives Dedmon, Goodwin (Primary Sponsors); and Cox.
Referred to: Finance.

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE RACING THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. - The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. - Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. A series of plates bearing an emblem, seal, other symbol or design displaying themes of professional stock car auto racing, or professional stock car auto racing team or driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may enter into agreements with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division or the Department of Corrections may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate."

The Div. may contract w/ any person.

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. - Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee mount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Racing Theme	$30.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00.

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. - The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0

In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Racing Theme	$30	0	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0.

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. - The Division may not issue any plate authorized by this subdivision unless it receives at least 100 applications for the plate. The cost of the racing theme special registration plate shall include all costs to produce blank plates for issuance by the Division, as provided in any agreement authorized by G.S. 20-79.4(b)(35a)."

SECTION 5. G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title	$35.00
(2) Each application for duplicate or corrected certificate of title	10.00
(3) Each application of repossessor for certificate of title	10.00
(4) Each transfer of registration	10.00
(5) Each set of replacement registration plates	10.00
(6) Each application for duplicate registration card	10.00
(7) Each application for recording supplementary lien	10.00
(8) Each application for removing a lien from a certificate of title	10.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	10.00
(10) Each application for a salvage certificate of title made by an insurer	10.00~~.~~
(11) Each set of replacement registration plates issued pursuant to G.S. 20-79.4(b)(35a)	25.00."

SECTION 6. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted.".

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less, other than a Friends of the Great Smoky Mountains National Park special registration plate, or a Racing Theme special registration plate, shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

SECTION 7. This act is effective on January 1, 2003.

SECTION 8. The Division of Motor Vehicles shall not issue new plates pursuant to Section 1 of this Act after September 1, 2005.

Summary of Changes in Proposed Committee Substitute (PCS)
For House Bill 1630 (NASCAR Driver Theme Special Plates)

1. In Section 2, the PCS reduces the additional fee for the plate from $35.00 to $30.00

2. In Section 3, the PCS reduces the credit to the Special Registration Plate Account from $35.00 to $30.00.

3. In Section 4, the PCS:

   (a) eliminates the placement of a deposit with the Division as a condition for issuance of plates and eliminates the requirement for 100 applications for each plate;

   (b) adds that the Division may require 300 applications for one or more plates as a condition for issuance; and

   (c) inserts "all costs" in place of "the costs" in the last sentence.

4. Adds a new Section 5 to provide for a $25.00 fee for issuance of replacement plates for the Racing Theme plates.

5. Adds a new Section 6 to provide for an additional exemption from the "First in Flight" plate design for the Racing Theme plates.

6. Amends the title to delete reference to NASCAR.

7. Amends Section to delete reference to NASCAR.

8. Changes effective date to January 1, 2003.

9. In Section 1, adds a reference to the Department of Corrections with respect to a contract for the production of blank plates.

10. Deletes the existing Section 4 and replaces it with a new section which requires at least 100 applications for each plate.

11. Adds a new Section which provides that the Division shall not issue new plates on or after September 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H 1

HOUSE BILL 1630*

Short Title:	NASCAR Driver Theme Special Plates.	(Public)
Sponsors:	Representatives Dedmon, Goodwin (Primary Sponsors); and Cox.	
Referred to:	Finance.	

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. A series of plates bearing an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may enter into agreements with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of

War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Racing Theme	$35.00
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00.

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the

Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Racing Theme	$35	0	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0.

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – Before the Division develops or distributes a racing theme plate in this series, it may choose to require 100 prepaid applications for any NASCAR or NASCAR driver's or team's respective plate, or a deposit from any person seeking issuance of a plate of one thousand dollars ($1,000) per plate. If a deposit is made pursuant to this subsection, the Division shall refund the deposit once an equivalent amount of license plate fees is collected for the plate for which the deposit is made. If an equivalent amount is not collected within four years of the issuance of the first plate, the Division may retain the deposit. The Division may develop any plate in this series without a minimum number of applications or deposit if the person providing the State

with the license to use the words, logos, trademarks, or designs associated with the plate produces the plate for the State without a minimum order quantity. The cost of the racing theme special registration plate shall include the costs to produce blank plates for issuance by the Division, as provided in any agreement with the Division authorized by G.S. 20-79.4(b)(35a)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1630
PROPOSED COMMITTEE SUBSTITUTE H1630-PCS6479-LAf-82

Short Title: NASCAR Driver Theme Special Plates. (Public)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. A series of plates bearing an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may enter into agreements with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. Notwithstanding G.S. 66-58(b), the Division may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled

veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Racing Theme	$30.00
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway

Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Racing Theme	$30	0	0
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – The Division may require that 300 or more applications for one or more of the plates issuable in this series be received before issuing a racing theme plate in this series. The Division may develop any plate in this series without a minimum number of applications if the person providing the State with the license to use the words, logos, trademarks, or designs associated with the plate produces the plate for the State without a minimum order quantity. The cost of the racing theme special registration plate shall include the costs to produce blank plates for issuance by the

Division, as provided in any agreement with the Division authorized by G.S. 20-79.4(b)(35a)."

SECTION 5. G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title $35.00
(2) Each application for duplicate or corrected certificate of title 10.00
(3) Each application of repossessor for certificate of title 10.00
(4) Each transfer of registration.....10.00
(5) Each set of replacement registration plates 10.00
(6) Each application for duplicate registration card.....10.00
(7) Each application for recording supplementary lien.....10.00
(8) Each application for removing a lien from a certificate of title 10.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale 10.00
(10) Each application for a salvage certificate of title made by an insurer .....10.00.
(11) Each set of replacement registration plates issued pursuant to G.S. 20-79.4(b)(35a).....25.00."

SECTION 6. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less, other than a Friends of the Great Smoky Mountains National Park special registration ~~plate,~~plate or a Racing Theme special registration plate, shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers

biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

SECTION 7. This act is effective when it becomes law.

HOUSE BILL 1630:
NASCAR Driver Theme Special Plates

BILL ANALYSIS

Committee:	House Finance	**Sponsor:**	Rep. Dedmon and Goodwin
Date:	August 13, 2002	**Analysis by:**	Martha Walston Committee Counsel
Version:	H1630-PCS6479-Laf-82		

SUMMARY: The proposed committee substitute for HB 1630 authorizes the DMV to issue Racing Theme special license plates for an additional $30.00 fee. This additional fee will go to the Special Registration Plate Account. The Racing Theme replacement fee will be $25.00, instead of the usual replacement fee of $10.00. SB 1370 is a companion bill.

CURRENT LAW: The General Assembly has authorized the Division of Motor Vehicles to issue many different registration plates. Most of these plates are not issued until at least 300 applications are received. The DMV has issued at least 87 special license plates. Applicants for the special license plates must pay the regular motor vehicle registration plate fee, and most applicants must also pay an additional fee. The additional fee is credited to the Special Registration Plate Account. After deducting the cost of the plates from this Account, $525,000 is annually appropriated to provide operating assistance for seven Visitor Centers. The Centers are located in Brunswick, Camden, Carteret, Caswell, Macon, Tyrrell, and Watauga Counties. The remaining revenue in the Account is transferred quarterly to the Department of Commerce for advertising (33%), the Department of Transportation for highway beautification (50%), and the Department of Health and Human Services to promote travel accessibility for disabled persons in the State (17%).

BILL ANALYSIS: The proposed committee substitute for House Bill 1630 directs the DMV to issue a Racing Theme special license plate for an additional fee of $30.00. The full additional amount will go into the Special Registration Plate Account. The special plate may bear an emblem, seal, other symbol or design displaying themes of National Association of Stock Car Auto Racing (NASCAR), or a NASCAR team or NASCAR driver. The DMV will not develop a plate without a license to use copyrighted or registered words, symbols, trademarks, or designs. Notwithstanding the Umstead Act, the DMV may enter into agreements with a person authorized to provide the State with such a license. The DMV may also contract for the production of blank plates in the series, provided the plates meet or exceed the State's expectations. The plate shall be designed in consultation with and approved by the person authorized to provide the license.

The DMV may require at least 300 applications before a plate in the series is issuable, or may develop the plate without the minimum number of applications if the person providing the State with the license produces the plate for the State without a minimum order quantity. The cost of the special plate shall include all costs to produce blank plates.

The cost for a replacement Racing Theme special plate shall be $25.00. The general replacement application fee is $10.00.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: August 13, 2002

TO: Representatives Dedmon and Goodwin

FROM: Stephanie Schmitt, Richard Bostic
Fiscal Research Division

RE: HB 1630 PCS - NASCAR Driver Theme Special Plates

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Highway Fund					
-Special Registration Plate Account		*See Assumptions and Methodology*			
-Replacement Fee		*See Assumptions and Methodology*			
EXPENDITURES					
Highway Fund Special Registration Plate Account		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a series of plates with themes of the National Association of Stock Car Auto Racing (NASCAR). The DMV may enter into agreements with any person authorized to provide

the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The DMV may also contract for the production of blank plates in this series, provided the plates meet or exceed the State's specifications. The NASCAR license plate will not be a "First in Flight" plate.

ASSUMPTIONS AND METHODOLOGY:

Highway Fund – Special Registration Plate Account

In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a NASCAR themed plate pays $30 that is deposited into the Special Registration Plate Account.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. The proposed legislation would allow the DMV to contract out the production of the special plates. It is not known how much such a contract would cost compared to internal production, but costs can be expected to increase due to NASCAR royalties of up to $7.50 for each plate (25% of the extra $30 cost).

According to Race Plates Marketing, LLC, a leading source for NASCAR driver license plates, and Motor Vehicle departments across various states, there are approximately 5 states that currently allow registered NASCAR special plates on licensed vehicles. West Virginia, as the first state to add NASCAR special plates, issued 4,053 plates in its first year with special registration fees of $65 for one year and $120 for two years. WV now estimates it has issued over 16,000 special NASCAR plates. Alternatively, Alabama was unable to reach the minimum number of orders required to begin issuing NASCAR plates, thus the implementation plans ceased in May 2002. South Carolina, Mississippi and Virginia have recently passed NASCAR special plate legislation and are beginning to make plans for issuing the plates. Many more states allow designer collector's plates to be made with their state name or insignia.

Because there is no way of knowing how many North Carolina citizens will apply for the plate, no accurate fiscal estimate is possible on either the revenue or expenditure side of this piece of the legislation.

Replacement Fee

Section 5 of the bill adds a $25 fee for each set of replacement registration plates issued under the revised statute. The replacement registration fee for a standard plate is $10. Currently, the DMV replaces less than 1% of plates annually; however, the NASCAR special plates might be more susceptible to theft and loss. It is not possible to estimate how many plates will need replacement.

SOURCES OF DATA: NC Division of Motor Vehicles; WV Division of Motor Vehicles

TECHNICAL CONSIDERATIONS:

68365

SHIELDS BUSINESS FORMS, RALEIGH, NC 27605

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NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1630 DATE _____

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

COMMITTEE SUBSTITUTE PCS6479-Lef-82

Rep.) Hill
Sen.)

1 moves to amend the bill on page 1, line 3
2 ( ) WHICH CHANGES THE TITLE
3 by adding the following immediately before
4 the period:
5 "A RETIRED DMV OFFICER SPECIAL
6 REGISTRATION PLATE";
7
8 and on page 4, lines 25 and 26,
9 by adding the following between those lines
10 to read:
11 "(36a1) Retired DMV Officer.—
12 Issuable to an officer who has
13 retired from the North Carolina
14 Division of Motor Vehicles. The
15 plate shall bear the phrase "DMV
16 Retired".
17

SIGNED _____

ADOPTED

MINUTES

HOUSE COMMITTEE ON FINANCE

SUBCOMMITTEE ON HOUSE BILL 1630

September 12, 2002

The subcommittee for **HB 1630, A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE NASCAR DRIVER THEME SPECIAL REGISTRATION PLATES**, met at 1:35 p. m. on Thursday, September 12 2002 in the House Conference Room of the Legislative Building. Members present included Representative Wainwright (Chairman), Representatives Cox, Jarrell, and Johnson. Staff person Gerry Cohen, Director of Bill Drafting, was also present. The Visitor Registration Sheet is attached as **Attachment 1.**

Representative Wainwright called the meeting to order. The Chairman recognized Gerry Cohen to explain the Proposed Committee Substitute (PCS). Mr. Cohen stated that the license plate was not unique to NASCAR, it also included professional stockcar auto racing. The bill required that there be a license to use the copyright. The Division of Motor Vehicles (DMV) could contract with any person authorized to provide the state with a license, and they could contract for the outside party to produce the plate. The bill would sunset on August 31, 2005, and no new plates would be issued unless the legislature decided to extend the sunset. Persons with plates could continue to renew those plates. The cost of the plate was $30.00. The DMV would not issue a Racing Theme plate unless it received at least 300 applications for the plate. The team plate requirement was dropped, and all teams were treated the same. Mr. Cohen went on to say that this bill covered the sport itself, NASCAR, and the driver, and it required 300 for any series. A replacement plate would cost $25.00. The Smokey Mountain Plate and the NASCAR plate would not say "First in Flight". The PCS and Fiscal Note are included in **Attachment 2**.

Representative Jarrell suggested that everywhere in the bill that read as "racing theme" be changed to "stock car racing". The Bill Sponsor, Representative Goodwin, had no objections to the change. The committee approved the change and Staff would make the change in the PCS.

Representative Jarrell suggested a change in the fee from $30.00 to $35.00. Representative Johnson asked if the increased fee would change the demand for the plate. Mr. Henry Jones of Jordan Price Wall Gray Jones and Carlton, said that he did not see a problem with the fee. Representative Goodwin had no problem with the fee increase. The state would get $3.75 more if the price was increased. The committee agreed with the change.

Representative Wainwright sent forth an amendment to the bill. He recognized Representative Goodwin to explain the proposed amendment. The amendment would add a special registration plate for the Blue Ridge Parkway Foundation. Representative Goodwin moved for its adoption. The subcommittee adopted the amendment. Refer to **Attachment 3**.

The Committee gave unanimous approval to the new Proposed Committee Substitute as amended. The bill would be reported to the Finance Committee with a favorable report. Staff would prepare a new PCS with the changes that were approved by the committee. The new, amended PCS and Fiscal Note are attached as **Attachments 4 and 5**.

The meeting adjourned at 2:00 p.m.

Respectfully submitted,

Blinda Edwards
Committee Assistant

Representative William Wainwright
Chairman

Attachment 1

VISITOR REGISTRATION SHEET

NASCAR DRIVER THEME
SPECIAL PLATE SUBCOMMITTEE — September 12, 2002
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Carr	Jordan Price Wall Gray Jones + Carlton
Henry Jones	" "
Kevin Killian	Moore & Van Allen
Lynn Coward	NCDOT
Diane Johnson	NCDOT/DMV
Sharon Matthews	DOT/DMV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1630
PROPOSED COMMITTEE SUBSTITUTE H1630-PCS8372-LB-166

Short Title: Racing Theme Special Plates. (Public)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE RACING THEME SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(35a) Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. This is a series of plates bearing an emblem, seal, other symbol or design displaying themes of professional stock car auto racing or a professional stock car auto racing driver. The Division shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may contract with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division or the Department of Correction may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. No new Racing Theme plates may be issued after August 31, 2005."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Racing Theme	$30.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Racing Theme	$30	0	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – The Division may not issue a Racing Theme plate authorized by G.S. 20-79.4(b)(35a) unless it receives at least 300 applications for the plate. The cost of the Racing Theme special registration plate shall include all costs to produce blank plates for issuance by the Division, as provided in any agreement authorized by G.S. 20-79.4(b)(35a)."

SECTION 5. G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1)	Each application for certificate of title	$35.00
(2)	Each application for duplicate or corrected certificate of title	10.00
(3)	Each application of repossessor for certificate of title	10.00
(4)	Each transfer of registration	10.00
(5)	Each set of replacement registration plates	10.00
(6)	Each application for duplicate registration card	10.00
(7)	Each application for recording supplementary lien	10.00
(8)	Each application for removing a lien from a certificate of title	10.00
(9)	Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale	10.00
(10)	Each application for a salvage certificate of title made by an insurer	~~10.00~~ 10.00
(11)	Each set of replacement registration plates issued pursuant to G.S. 20-79.4(b)(35a)	25.00."

SECTION 6. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less, other than a Friends of the Great Smoky Mountains National Park special registration ~~plate,~~ plate or a Racing Theme special registration plate shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers

biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

SECTION 7. This act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: September 11, 2002

TO: Gerry Cohen

FROM: Stephanie Schmitt, Richard Bostic
Fiscal Research Division

RE: HB 1630 PCS - Racing Theme Special Plates

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Highway Fund					
-Special Registration Plate Account		*See Assumptions and Methodology*			
-Replacement Fee		*See Assumptions and Methodology*			
EXPENDITURES					
Highway Fund					
Special Registration Plate Account		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a series of Racing Theme special license plates, upon receiving 300 applications for each plate. The DMV shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate and can contract with any person authorized to provide such licenses. The DMV or the Department of Correction may also contract for the production of blank plates in this series,

provided the plates meet or exceed the State's specifications. The Racing Theme license plates will not be "First in Flight" plates. No new Racing Theme plates may be issued after August 31, 2005.

ASSUMPTIONS AND METHODOLOGY:

Highway Fund – Special Registration Plate Account

In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a Racing Theme plate pays $30 that is deposited into the Special Registration Plate Account.

According to the DMV, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. The proposed legislation allows the DMV or Department of Correction to contract out the production of the special plates. It is assumed that Race Plate Marketing, LLC will be used. The vendor will supply the state with the special plates with graphics. The state will reimburse the vendor $4.00 per plate. The state will then emboss and package the plates for citizens. Royalties of $7.50 for each plate (25% of the extra $30 cost) will also be paid to the vendor. **Thus, the state retains a net profit of $18.50 for each new plate registration and $22.50 for each plate registration renewal.**

According to Race Plate Marketing, LLC and Motor Vehicle departments across various states, there are approximately 5 states that currently allow registered racing theme special plates on licensed vehicles. West Virginia, as the first state to add racing theme special plates, issued 4,053 plates in its first year with special registration fees of $65 for one year and $120 for two years. WV now estimates it has issued over 16,000 special racing theme plates. Alternatively, Alabama was unable to reach the minimum number of orders required to begin issuing racing theme plates, thus the implementation plans ceased in May 2002. New York, South Carolina and Mississippi also have racing theme license plates. Virginia recently passed racing theme special plate legislation and is beginning to make plans for issuing the plates. Many more states allow designer collector's plates to be made with their state name or insignia.

Because there is no way of knowing how many North Carolina citizens will apply for or annually renew the Racing Theme plate, no accurate fiscal estimate or projection is possible on either the revenue or expenditure side of this piece of the legislation.

Replacement Fee

Section 5 of the bill adds a $25 fee for each set of replacement registration plates issued under the revised statute. The replacement registration fee for a standard plate is $10. Currently, the DMV replaces less than 1% of plates annually; however, the racing theme special plates might be more susceptible to theft and loss. It is not possible to estimate how many plates will need replacement.

SOURCES OF DATA: NC Division of Motor Vehicles; WV Division of Motor Vehicles; Race Plate Marketing, LLC

TECHNICAL CONSIDERATIONS:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1630

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

H1630-ALB-257 [v.1]

Date September 12, ,2002

Comm. Sub. [NO]
Amends Title [NO]
First Edition

Representative Wainwright

moves to amend the bill on page 1, line 3, by adding the following before the period at the end: ", AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A BLUE RIDGE PARKWAY FOUNDATION SPECIAL REGISTRATION PLATE.

Further moves to amend the bill on page 4, line 40, by deleting "plate", by removing the strike-through, and by adding the following after the comma "a Blue Ridge Parkway Foundation special registration plate,

Further moves to amend the bill on page 1, line 26, by adding the following between lines 26 and 27:

"**SECTION 1.1.** G.S. 79.4(b) is amended by adding a new subdivision to read;

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3a1) Blue Ridge Parkway Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall have the words 'First in Flight' printed at the top of the plate above all other letters and numerals. The background of the plate shall be the full art,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1630

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

H1630-ALB-257 [v.1]

three-color design submitted to the Division by the Blue Ridge Parkway Foundation in camera-ready format. The background color and design shall allow the numbers on the face of the plate to be readily distinguished. Submission to the Division of the background design authorized by this subdivision shall be the final design and, upon acceptance by the Division, no further changes in the background design shall be made."

Further moves to amend the bill on page 2, line 10, by adding the following between lines 10 and 11:

"Blue Ridge Parkway Foundation $30.00"

further moves to amend the bill on page 3, line 9, by adding the following between lines 9 and 10:

"Blue Ridge Parkway Foundation $10 $20 0"

further amend the bill on page 5, line 2, by adding the following between lines 2 and 3:

"SECTION 6.1. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b17) Blue Ridge Parkway Foundation Plates. – The Division shall receive 300 applications for a Blue Ridge Parkway Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Blue Ridge Parkway Foundation plates to the Blue Ridge Parkway Foundation for use in promoting the Blue Ridge Parkway as a scenic attraction."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1630

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

H1630-ALB-257 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H D

HOUSE BILL 1630
PROPOSED COMMITTEE SUBSTITUTE H1630-PCS5465-LBf-170

Short Title: Stock Car Racing Theme Special Plates. (Public)

Sponsors:

Referred to:

June 12, 2002

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE STOCK CAR RACING THEME SPECIAL REGISTRATION PLATES, AND TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE A BLUE RIDGE PARKWAY FOUNDATION SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-79.4(b) is amended by adding new subdivisions to read:

"(b) Types. – The Division shall issue the following types of special registration plates:

...

(3d) Blue Ridge Parkway Foundation. – Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall have the words 'First in Flight' printed at the top of the plate above all other letters and numerals. The background of the plate shall be the full art, three-color design submitted to the Division by the Blue Ridge Parkway Foundation in camera-ready format. The background color and design shall allow the numbers on the face of the plate to be readily distinguished. Submission to the Division of the background design authorized by this subdivision shall be the final design and, upon acceptance by the Division, no further changes in the background design shall be made.

...

(35a) Stock Car Racing Theme. – Issuable to the registered owner of a motor vehicle pursuant to G.S. 20-81.12. This is a series of plates bearing an emblem, seal, other symbol or design displaying themes of professional stock car auto racing or a professional stock car auto racing driver. The Division shall not develop any plate in the series

without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate. The Division may contract with any person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. The Division or the Department of Correction may contract for the production of blank plates in this series to be issued by the Division, provided the plates meet or exceed the State's specifications. The plate shall be designed in consultation with and approved by the person authorized to provide the State with the license to use the words, symbols, trademarks, or designs associated with the plate. No new Stock Car Racing Theme plates may be issued after August 31, 2005."

SECTION 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. – Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Blue Ridge Parkway Foundation	$30.00
Collegiate Insignia	$25.00
Goodness Grows	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
The V Foundation for Cancer Research Division	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Audubon North Carolina	$20.00
Ducks Unlimited	$20.00
(Effective until June 30, 2006) Harley Owners' Group	$20.00
First in Forestry	$20.00
Litter Prevention	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$25.00
Stock Car Racing Theme	$35.00
Save the Sea Turtles	$20.00
Scenic Rivers	$20.00

School Technology	$20.00
Soil and Water Conservation	$20.00
Special Forces Association	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None
Purple Heart Recipient	None
Silver Star Recipient	None
All Other Special Plates	$10.00."

SECTION 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. – The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Audubon North Carolina	$10	$10	0
Blue Ridge Parkway Foundation	$10	$20	0
Ducks Unlimited	$10	$10	0
First in Forestry	$10	0	$10
Goodness Grows	$10	$15	0
(Effective until June 30, 2006) Harley Owners' Group	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Litter Prevention	$10	$10	0
March of Dimes	$10	$10	0
Olympic Games	$10	$15	0
Omega Psi Phi Fraternity	$10	$10	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
(Effective until June 30, 2006) Rocky Mountain Elk Foundation	$10	$15	0
Stock Car Racing Theme	$35	0	0
Save the Sea Turtles	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0

Soil and Water Conservation	$10	$10	0
Special Forces Association	$10	$10	0
Special Olympics	$10	$10	0
State Attraction	$10	$20	0
Support Public Schools	$10	$10	0
The V Foundation for Cancer Research	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

SECTION 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b23) Racing Theme. – The Division may not issue a Stock Car Racing Theme plate authorized by G.S. 20-79.4(b)(35a) unless it receives at least 300 applications for the plate. The cost of the Stock Car Racing Theme special registration plate shall include all costs to produce blank plates for issuance by the Division, as provided in any agreement authorized by G.S. 20-79.4(b)(35a)."

SECTION 5. G.S. 20-85(a) reads as rewritten:

"(a) The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1) Each application for certificate of title $35.00
(2) Each application for duplicate or corrected certificate of title 10.00
(3) Each application of repossessor for certificate of title 10.00
(4) Each transfer of registration 10.00
(5) Each set of replacement registration plates 10.00
(6) Each application for duplicate registration card 10.00
(7) Each application for recording supplementary lien 10.00
(8) Each application for removing a lien from a certificate of title 10.00
(9) Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in G.S. 20-286, or a motor vehicle retailer for the purpose of resale 10.00
(10) Each application for a salvage certificate of title made by an insurer ..... ~~10.00.~~10.00
(11) Each set of replacement registration plates issued pursuant to G.S. 20-79.4(b)(35a) ..... 25.00."

SECTION 6. G.S. 20-63(b) reads as rewritten:

"(b) Every license plate shall have displayed upon it the registration number assigned to the vehicle for which it is issued, the name of the State of North Carolina, which may be abbreviated, and the year number for which it is issued or the date of expiration. A plate issued for a commercial vehicle, as defined in G.S. 20-4.2(1), and weighing 26,001 pounds or more, must bear the word "commercial," unless the plate is a special registration plate authorized in G.S. 20-79.4 or the commercial vehicle is a trailer or is licensed for 6,000 pounds or less. The plate issued for vehicles licensed for 7,000 pounds through 26,000 pounds must bear the word "weighted".

A registration plate issued by the Division for a private passenger vehicle or for a private hauler vehicle licensed for 6,000 pounds or less, other than a Friends of the Great Smoky Mountains National Park special registration ~~plate,~~ plate or a Stock Car Racing Theme special registration plate shall be a "First in Flight" plate. A "First in Flight" plate shall have the words "First in Flight" printed at the top of the plate above all other letters and numerals. The background of the plate shall depict the Wright Brothers biplane flying over Kitty Hawk Beach, with the plane flying slightly upward and to the right."

SECTION 7. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b17) Blue Ridge Parkway Foundation Plates. – The Division shall receive 300 applications for a Blue Ridge Parkway Foundation plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Blue Ridge Parkway Foundation plates to the Blue Ridge Parkway Foundation for use in promoting the Blue Ridge Parkway as a scenic attraction."

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

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note.]

DATE: September 13, 2002

TO: Representatives Dedmon and Goodwin

FROM: Stephanie Schmitt, Richard Bostic
Fiscal Research Division

RE: HB 1630 PCS – Stock Car Racing Theme Special Plates (v. 3)

FISCAL IMPACT

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

	FY 2002-03	FY 2003-04	FY 2004-05	FY 2005-06	FY 2006-07
REVENUES					
General Fund			*No Impact*		
Highway Fund					
-Special Registration Plate Account		*See Assumptions and Methodology*			
-Collegiate & Cultural Attraction Plate Account		*See Assumptions and Methodology*			
-Replacement Fee		*See Assumptions and Methodology*			
EXPENDITURES					
Highway Fund					
-Special Registration Plate Account		*See Assumptions and Methodology*			
-Collegiate & Cultural Attraction Plate Account		*See Assumptions and Methodology*			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Division of Motor Vehicles

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue a series of Stock Car Racing Theme special license plates, upon receiving 300 applications for each plate. The DMV shall not develop any plate in the series without a license to use copyrighted or registered words, symbols, trademarks, or designs associated with the plate and can contract with any person authorized to provide such licenses. The DMV or the Department of Correction may also contract for the production of blank plates in this series, provided the plates meet or exceed the State's specifications. The Stock Car Racing Theme license plates will not be "First in Flight" plates. No new Stock Car Racing Theme plates may be issued after August 31, 2005.

The bill also authorizes the DMV to issue a Blue Ridge Parkway Foundation special license plate, upon receiving 300 applications for each plate. The Blue Ridge Parkway Foundation license plates will be "First in Flight" plates, although the background of the plate shall be the full art, three-color design submitted to the DMV by the Blue Ridge Parkway Foundation in camera-ready format. The background color and design shall allow the numbers on the face of the plate to be readily distinguished.

ASSUMPTIONS AND METHODOLOGY:

Stock Car Racing Theme Special Plate

Highway Fund – Special Registration Plate Account
In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for a Stock Car Racing Theme plate pays $35 that is deposited into the Special Registration Plate Account.

According to the DMV, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. The proposed legislation allows the DMV or Department of Correction to contract out the production of the special plates. It is assumed that Race Plate Marketing, LLC will be used. The vendor will supply the state with the special plates with graphics. The state will reimburse the vendor $4.00 per plate. The state will then emboss and package the plates for citizens. Royalties of $8.75 for each plate (25% of the extra $35 cost) will also be paid to the vendor. **Thus, the state retains a net profit of $22.25 for each new plate registration and $26.25 for each plate registration renewal.**

According to Race Plate Marketing, LLC and Motor Vehicle departments across various states, there are approximately 5 states that currently allow registered racing theme special plates on licensed vehicles. West Virginia, as the first state to add racing theme special plates, issued 4,053 plates in its first year with special registration fees of $65 for one year and $120 for two years. WV now estimates it has issued over 16,000 special racing theme plates. Alternatively, Alabama was unable to reach the minimum number of orders required to begin issuing racing theme plates, thus the implementation plans ceased in May 2002. New York, South Carolina and Mississippi also have racing theme license plates. Virginia recently passed racing theme special plate

legislation and is beginning to make plans for issuing the plates. Many more states allow designer collector's plates to be made with their state name or insignia.

Because there is no way of knowing how many North Carolina citizens will apply for or annually renew the Stock Car Racing Theme plate, no accurate fiscal estimate or projection is possible on either the revenue or expenditure side of this piece of the legislation.

Replacement Fee

Section 5 of the bill adds a $25 fee for each set of replacement registration plates issued under the revised statute. The replacement registration fee for a standard plate is $10. Currently, the DMV replaces less than 1% of plates annually; however, the racing theme special plates might be more susceptible to theft and loss. It is not possible to estimate how many plates will need replacement.

Blue Ridge Parkway Foundation Special Plate

Section 4 of the bill authorizes the DMV to issue the Blue Ridge Parkway Foundation special registration plate. In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for one of these plates pays $30. Ten dollars ($10) is deposited into the Special Registration Plate Account and $20 is deposited into the Collegiate and Cultural Attraction Plate Account. The DMV will make a quarterly transfer from the Collegiate and Cultural Attraction Plate Account (using money from the sale of the plate) to the Blue Ridge Parkway Foundation for use in promoting the Blue Ridge Parkway as a scenic attraction.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.00 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. It is assumed that the background of the plate shall be the full art, three-color design submitted to the DMV by the Blue Ridge Parkway Foundation in camera-ready format.

The Fiscal Research Division cannot estimate the number of citizens who will request this plate, thus no accurate fiscal estimate is possible on the bill.

SOURCES OF DATA: NC Division of Motor Vehicles; WV Division of Motor Vehicles; Race Plate Marketing, LLC

TECHNICAL CONSIDERATIONS: