

2003-2004

**HOUSE
OCCUPATIONAL
SAFETY & HEALTH**

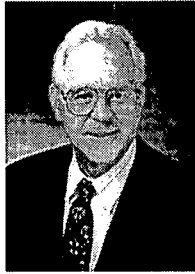
**COMMITTEE
MINUTES**

NORTH CAROLINA GENERAL ASSEMBLY
House Committee on Occupational Health and Safety
2003 – 2004 SESSION



G. Wayne Goodwin

Chair



J. Curtis Blackwood, Jr.

Vice Chair

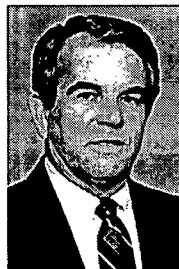


Margaret H. Dickson

Vice Chair



Rex L. Baker



E. Nelson Cole



N. Leo Daughtry



John D. Hall.



Howard Hunter, Jr.



Patrick T. McHenry



T. Roger West



Harold J. Brubaker

Ex-officio



Bill Culpepper

Ex-officio



W. Pete Cunningham

Ex-officio



Rick L. Eddins

Ex-officio

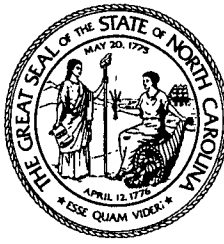
HOUSE COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Organizational Meeting

AGENDA

March 5, 2002

Call to Order	Representative Wayne Goodwin, Chair
Welcoming Remarks	Representative Wayne Goodwin, Chair
Introduction of Committee Vice-chairs and Members	Committee
Introduction of Staff	
Counsel	
Research	
Committee Assistant	
Sergeant at Arms	
Future Meetings	Representative Wayne Goodwin, Chair
Adjournment	



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

March 5, 2003

The House Committee on Occupational Safety and Health met on March 5, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Blackwood, Dickson, Goodwin and McHenry.

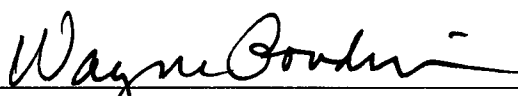
Committee Chair Representative Wayne Goodwin called the meeting to order at 10:15 A.M., indicated that this, the first meeting of the 2003-2004 session, was an organizational meeting, and stated that members of the committee had expressed an interest in the following three issues: 1) the mission of the North Carolina Department of Labor 2) the circumstances surrounding the West Pharmaceuticals explosion in Kinston, and 3) "smart" as opposed to "over" regulation. The Chair recognized the Committee's two vice chairs, Representatives Curtis Blackwood and Margaret Dickson.

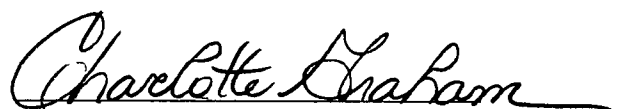
Representative Blackwood noted that, in addition to the three items that the Chair had described, he was also interested in safety on North Carolina's ski slopes. The Chair then recognized the Committee members. Next he introduced the Committee staff, Bill Gilkeson and Hal Pell.

The Chair said that in future meetings members would receive an overview on the activities of the North Carolina Department of Labor and requested that Legislative Liaison Kevin Leonard arrange for the appropriate speakers. The Chair also requested that staff conduct research on indoor pyrotechnics.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:29 A.M.

Respectfully submitted,


Representative Wayne Goodwin
Chair


Charlotte Graham
Committee Assistant

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Name of Committee

Date

03/05/03

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Wilms

NCHBA

Doug Lassiter

NC STA

Bill Scoggin

KENNEDY CONCRETE

KEVIN LEONARD

NCDOL

Yvonne Thompson

UMCIC

Lucius PULLEN

COUNSEL NC MINING ASSOCIATION

Leanne Fournelle

23 MILLER AVE
CUREWOOD, NC 28025

Julie Allen

NC Statewatch

John Goodman

MERCER & Assoc.

Mike Blum

NC STATE AGENCY

Richard Westbrook

UTU

HOUSE COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

FIRM OR AGENCY AND ADDRESS

Tom Coley

CWA Political Council GSO

Agenda

North Carolina House Committee On Occupational Safety and Health

March 12, 2003

10:00 am

Call to Order

Representative Wayne Goodwin, Chair

Overview of the Occupational Safety
and Health Act

Hal Pell, Staff Attorney

Overview of the NC Department of Labor

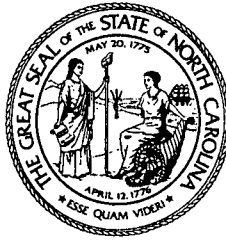
John Baldwin, Chief of Staff, NC
Department of Labor

Overview of the Division of Occupational
Safety and Health

John Johnson, Deputy
Commissioner/Director, Division of
Occupational Safety and Health, NC
Department of Labor

Questions and Answers

Adjournment



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

March 12, 2003

The House Committee on Occupational Safety and Health met on March 12, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Blackwood, Cole, Dickson, Goodwin Hall, McHenry and West.

Committee Chair Representative Wayne Goodwin called the meeting to order at 10:02 A.M. and recognized Staff Counsel Hal Pell. Mr. Pell distributed to the members copies of N.C.G.S. §§ 95-126 et seq. and discussed the relevance of the statutes, The Occupational Safety and Health Act.


The Chair then recognized Mr. John Baldwin, Chief of Staff, North Carolina Department of Labor, who in turn recognized J.J. Bullock, Executive Assistant to Commissioner of Labor Cherie Berry, and Kevin Leonard, Legislative Liaison for the North Carolina Department of Labor. He then introduced Mr. John Johnson, Deputy Commissioner/Director, Division of Occupational Safety and Health, North Carolina Department of Labor. Mr. Johnson presented an overview of the Division of Occupational Safety and Health.

The floor was opened for questions and answers. Representative Cole asked if the inspection of amusement devices was receipt supported. Mr. Johnson replied that it was.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:47 AM.

Respectfully submitted,


Representative Wayne Goodwin
Chair


Charlotte Graham
Committee Assistant

Biography

John H. Johnson

Deputy Commissioner/Director
North Carolina Department of Labor
Division of Occupational Safety and Health

Telephone: **(919) 807-2861**

Fax: **(919) 807-2855**

E-mail: **jjohnson@mail.dol.state.nc.us**

USPS: **4 West Edenton Street
Raleigh, NC 27601-1092**

Toll free: **1-800-LABOR-NC or 1-800-522-6762**



John H. Johnson was appointed Deputy Commissioner and Director of Occupational Safety and Health for the North Carolina Department of Labor (NCDOL) by Commissioner of Labor Cherie K. Berry in January 2001.

John joined NCDOL after serving for past 16 years of consulting and managing with J-E-T-S Inc. Consultants of Charlotte. A safety/quality/management professional with over 25 years experience in helping improve safety and reliability of commercial and governmental organizations, John holds several professional certifications, and is the author of numerous papers and training programs in his fields of expertise.

His experience includes research and development, design, construction, manufacturing, fabrication, analytical and testing laboratory operations, normal and hazardous waste facility operations, employee concern/feedback systems, and precision measurement. His leadership and expertise are exemplified by his participating on the Board of Directors for the association representing the 26 OSHA State Plan states, on the NC Radiation Protection Commission, on the Advisory Board for PhD in Occupational Safety & Health Research at UNC, and representing the United States of America with the International Atomic Energy Agency.

John grew up in Goldsboro; now he and his wife, Betsy, live in Charlotte, where they are active in their Church and other civic activities. They enjoy travel and outdoor activities such as fishing, camping, and hiking. John also enjoys old wood boats, classic sports cars, and a round of golf when possible.

The Occupational Safety and Health Act

NCGS §§ 95-126 et seq

Prepared for the House Occupational Safety and Health Committee

Rep. Wayne Goodwin, Chair

North Carolina General Assembly

March 12, 2003

- **NCGS § 95-126** **Legislative Purpose** (attached).
- **NCGS § 95-127** **Definitions.** An employer is a person engaged in a business who has employees. Includes the State or a political subdivision of the State. Issue: are workers employees, or are they independent contractors?
- **NCGS § 95-128** **Coverage.** All employees other than those excepted by statute (e.g., workers specifically protected by federal acts, maritime workers, federal employees).
- **NCGS § 95-129** **Rights and duties of employers.** Broad statement of each employers obligation to furnish a workplace free from recognized hazards that are causing or likely to cause serious injury or serious physical harm. Known as the "General Duty Clause." Used to reach hazardous conditions not otherwise regulated (e.g., ergonomics).
- **NCGS § 95-130** **Rights and duties of employees.** Employees can contest the time given to an employer to abate a hazard. Employees are also required to comply with rules and regulations. A defense to an OSHA citation is "employee misconduct."
- **NCGS § 95-131** **Development and promulgation of standards.** All federal regulations are required to be adopted by the State, unless the State adopts a regulation "as effective as" the federal regulation. State may adopt more stringent standards.
- **NCGS § 95-132** **Variances.** Provides procedure for temporary variances from standards.
- **NCGS § 95-133** **Office of Director of OSH; powers and duties.** Establishes the Occupational Safety and Health Division in the NCDOL, and requires the Commissioner of Labor to appoint a Director to administer the OSH program. This statute also grants power to the Commissioner to issue all "types of notices, citations, cease and desist orders," or any other form necessary to enforce compliance with the Act.
- **NCGS § 95-134** **Advisory Council.** Establishes a Council of 11 members, appointed by the Commissioner: three representatives from management, three

representatives from labor, four reps. from the public sector with knowledge of OSH professions, and one rep. From the public sector with knowledge of migrant labor. The Council advises, consults with, and makes recommendations to the Commissioner.

- **NCGS § 95-135 Safety and Health Review Board.** Establishes the SHRB, and procedures. The Board is appointed by the Governor, with staggered six year terms. The Board hears all appeals entered on citations and abatement periods, and from all types of penalties. The Chair of the Board appoints Hearing Examiners, who are the first line reviewers of any appeals. Parties can appeal a Hearing Examiner decision to the full Board.
- **NCGS § 95-136 Inspections.** Provides for workplace inspections, and authorizes compliance officers to both enter and inspect any place of employment to carry out the purposes of the Act. Compliance officers may "enter without delay" at any reasonable time. This section authorizes the issuance of sub poenas to require attendance of witnesses, and production of evidence.
- **NCGS § 95-136.1 Special Emphasis Inspection Program.** Requires the OSHD to develop a program for the inspection of employers with high risk or high rate of work-related fatalities or work-related serious injuries or illnesses.
- **NCGS § 95-137 Issuance of Citations.** Provides for the process of issuing citations and enforcement procedures for violations of the regulations and standards under the Act. The statute also requires local units of government to report to its local governing board, and to its workers compensation carrier or risk pool, any violations for which it received a citation.
- **NCGS § 95-138 Civil Penalties.** Provides for penalty amounts (e.g., \$7000 maximum for each serious violation, \$70,000 maximum for each willful violation). Requires the Commissioner to give due consideration to the appropriateness of the penalty with respect to four factors: size of the business, gravity of the violation, good faith of the employer, and record of previous violations. Uniform standards must be adopted and utilized by the Commissioner and the Safety and Health Review Board when determining sentence appropriateness.
- **NCGS § 95-139 Criminal Penalties.** Provides for a criminal penalty for willful violation of a regulation which results in a fatality, with increased penalty for a second violation. False reporting or giving advance notice of an inspection are also criminal acts.
- **NCGS § 95-140 Procedures to counteract imminent dangers.** A superior court judge may issue a temporary restraining orders where there are imminent dangers at a workplace and an employer refuses to abate.

- **NCGS § 95-141 Judicial Review.** Provides for judicial review of Safety and Health Review Board decisions in the State superior and appellate courts.
- **NCGS § 95-142 Legal Representation of the DOL.** The Attorney General represents NCDOL in all actions under the Article.
- **NCGS § 95-143 Record keeping and reporting.**
- **NCGS § 95-144 Statistics**
- **NCGS § 95-145 Reports to the Secretary. [U.S. Secretary of Labor]**
- **NCGS § 95-146 Continuation and Effectiveness of this Article.** The Commissioner is required to furnish the Secretary of Labor confirmation that the enforcement procedures are, and will be, as effective as federal standards.
- **NCGS § 95-147 Training and Employee Education.**
- **NCGS § 95-148 Safety and health programs of State agencies and local governments.** All units and subdivisions of government are required to maintain an effective and comprehensive occupational safety and health program.
- **NCGS § 95-149 Authority to enter into contracts.**
- **NCGS § 95-150 Assurance of adequate funds to enforce Article.** The Commissioner is required to submit a budget and request sufficient appropriations to adequately administer the program.
- **NCGS § 95-151 Discrimination.** It is unlawful to discriminate against any employer, employee, or any other person related to the administration of the program based upon sex, race, ethnic origin, or religious affiliation.
- **NCGS § 95-152 Confidentiality of trade secrets.**
- **NCGS § 95-153 Reserved.**
- **NCGS § 95-154 Authorization for similar safety and health federal-state programs.** The State may enter into agreements with federal agencies for administering occupational safety and health measures.
- **NCGS § 95-155 Construction and severability.**
- **NCGS § 95-156 through NCGS § 95-160. Reserved.**

H. Pell, Staff Attorney

Article 16.

Occupational Safety and Health Act of North Carolina.

§ 95-126. Short title and legislative purpose.

(a) This Article shall be known as the "Occupational Safety and Health Act of North Carolina" and also may be referred to by abbreviations as "OSHANC."

(b) Legislative findings and purpose:

- (1) The General Assembly finds that the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope of attaining this objective lies in programs of research, education and enforcement, and in the earnest cooperation of the federal and State governments, employers and employees.
- (2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to ensure so far as possible every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources:
 - a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;
 - b. By providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;
 - c. By authorizing the Commissioner to develop occupational safety and health standards applicable to business giving consideration to the needs of employers and employees and to adopt standards promulgated from time to time by the Secretary of Labor under the Occupational Safety and Health Act of 1970, and by creating a safety and health review board for carrying out adjudicatory functions under this Article;
 - d. By building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;
 - e. By providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
 - f. By providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;

- g. By providing an effective enforcement program which shall include a prohibition against giving advance notice of an inspection and sanctions for any individual violating this prohibition;
- h. By providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problem;
- i. By encouraging joint employer-employee efforts to reduce injuries and diseases arising out of employment;
- j. By providing for research in the field of occupational safety and health, by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;
- k. By exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;
- l. By authorizing the Commissioner to enter into contracts with the Department of Health and Human Services, or any other State or local units, to the end the Commissioner and the Department of Health and Human Services and other State or local units may fully cooperate and carry out the ends and purposes of this Article.
- m. The General Assembly of North Carolina appoints and elects the North Carolina Department of Labor as the designated agency to administer the Occupational Safety and Health Act of North Carolina. (1973, c. 295, s. 1; c. 476, s. 128; 1989, c. 727, s. 219(13); 1997-443, s. 11A.33.)

VISITOR REGISTRATION SHEET

Occupational Safety & Health
Name of Committee

3:12:03

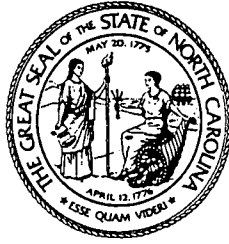
Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

JD (Grace) Bullen	NC DOL - Raleigh
Chris Ginn	UHS
James Andrews	NC State AFL-CIO
Doug Lassiter	NC Seismic Tank Assoc
R. Paul Wilkins	NCHBA
Bob Dasabek	NC State Watch
John Johnson	NC DOL
John Baldwin	NC DOL
Kevin Leonard	NC DOL
Nancy Thompson	UMCIC
Rob Schofield	NC Justice Center
Leanne Jones	28 W. 10th Ave, Curran



North Carolina House of Representatives

Committee on Occupational Safety and Health

Legislative Office Building, Room 415

Agenda

March 19, 2003

10:00 a.m.

Call to Order

Representative Margaret Dickson, Vice Chair

Introduction of Speaker

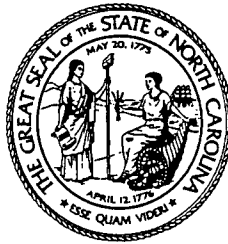
Frank Folger, Legislative Counsel, NC Department
of Insurance

Pyrotechnics Regulations and
the State Building Code

Tim Bradley, Senior Deputy Commissioner, Office
of State Fire Marshall, NC Department of Insurance

Questions and Answers

Adjournment



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

March 19, 2003

The House Committee on Occupational Safety and Health met on March 19, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Baker, Blackwood, Dickson, Goodwin, McHenry and West. Bill Gilkerson and Hal Pell, Staff Counsels, were in attendance. A Visitor Registration list is attached and made a part of these minutes.

Committee Vice Chair Representative Margaret Dickson called the meeting to order at 10:08 A.M. and recognized the Sergeant at Arms, Mr. Aaron Woodlief and Mr. Jim Womack, and the pages, Ms. Caitlin Sexton of Johnston County and sponsored by Representative Creech and Mr. Sam Nzewi of Forsyth County and sponsored by Representative Parmon. The Presiding Chair then recognized Mr. Frank Folger, Legislative Counsel for the North Carolina Department of Insurance.

Mr. Folger introduced Mr. Tim Bradley, Senior Deputy Commissioner, Office of State Fire Marshall, North Carolina Department of Insurance, to discuss North Carolina pyrotechnics regulations and the State Building Code. A copy of Mr. Bradley's remarks are attached and made a part of these minutes.

Following Mr. Bradley's remarks the floor was opened for questions. Representative Dickson asked who was responsible for seeking a permit for indoor pyrotechnics – those providing the show or the building owner. Mr. Bradley responded that it was the building owner. Representative Dickson asked how could the show provider be prevented from engaging in an unpermitted display. Mr. Bradley responded that a \$50 fine would be levied against the owner of the building.

Representative Baker asked, in the case of a committee meeting, what liability does the chair of that committee bear if the room is over the permitted occupancy. Mr. Bradley responded that state government building were exempt from the occupancy regulations.

Mr. Bradley noted that the four primary issues in terms of fire safety regulation were 1) use of pyrotechnics, 2) interior finishings, 3) locked and blocked exits (He specifically cited the Hamlet chicken plant fire of 1991) and 4) occupancy levels.

Representative Goodwin remarked that current law classifies unpermitted use of pyrotechnics as a Class II misdemeanor and perhaps the Committee should consider increasing the penalty to a Class I misdemeanor. Mr. Bradley indicated that the Office of the State Fire Marshall would be very supportive of such legislation as it would be a step toward greater assurance of the public's safety. He said that the Committee might also consider increasing the penalty for locked and blocked exits to a Class I misdemeanor. Representative Dickson asked what the current penalty was for such an infraction. Mr. Bradley responded that it was a Class III misdemeanor.

Representative Goodwin asked what the regulations were regarding use of plastic foam and other combustible materials in buildings. Mr. Bradley responded that misuse of finishing materials were adequately addressed in the State Building Code but that the Committee might consider increasing the penalty for noncompliance to a Class I misdemeanor.

Representative McHenry remarked that the State Building Code and fire regulations seemed to adequately address fire prevention and asked what else could be done to prevent incidents such as the nightclub fire in Rhode Island. Mr. Bradley answered that if the permitting process was followed, the regulations were adequate to prevent fire. However, buildings could be modified after inspection and violations would not be detected for up to a year. He added that charging the violator with a Class III misdemeanor was not a sufficient deterrent as it levied only a \$50 fine. Representative Goodwin added that the Office of State Fire Marshall was recommending that penalties be increased for those who are noncompliant, which would not place undue burden on those businesses that did adhere to the regulations.

Representative Blackwood asked if the \$50 penalty was per incident of noncompliance cited or per inspection. Mr. Bradley responded that it was per inspection. Representative Blackwood remarked that the building owner should not be held liable if the show provider used unpermitted pyrotechnics without notifying the owner of their intent to do so. He then asked what the penalty was for a Class I misdemeanor. Mr. Folger responded that he thought it was 120 days maximum in jail and no maximum fine. Representative Goodwin recommended that the Committee inquire of members of one of the judiciary committees as to the penalty. Representative Blackwood indicated that he was opposed to open-ended penalties. He also noted that perhaps the Committee should address the level of penalty in the case of multiple offenses such as over occupancy and blocked and locked doors.

Representative Dickson asked if the penalty was increased if there were injuries or fatalities associated with the violation. Mr. Folger said that the North Carolina General Statutes permit increased penalties in such cases and that the General Assembly could criminalize those cases of noncompliance where there were injuries and fatalities.

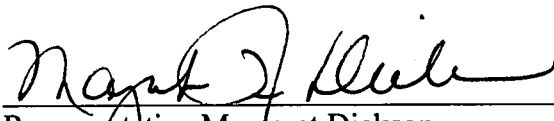
Staff Counsel Hal Pell noted that the penalties for the three classes of misdemeanors were as follows: Class III misdemeanor -- \$200 penalty, Class II misdemeanor -- \$1000

penalty, and Class I misdemeanor – penalty is at the discretion of the court. He added that these misdemeanor classes were subject to the guidelines of structured sentencing.

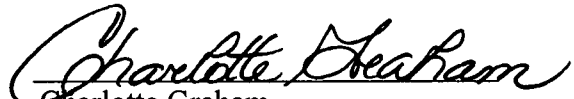
Representative Blackwood asked if the charge would be involuntary manslaughter if the violation resulted in fatalities Mr. Pell responded that the district attorney had the discretion to do so.

There being no further business, the Presiding Chair adjourned the meeting at 10:55 AM.

Respectfully submitted,



Representative Margaret Dickson
Presiding Chair



Charlotte Graham
Committee Assistant

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JIM LONG
STATE FIRE MARSHAL
INSURANCE COMMISSIONER

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TIM BRADLEY

Senior Deputy Commissioner North Carolina Department of Insurance

Tim Bradley has been in the fire and rescue service for 26 years. He began his career serving with Mebane Fire and Rescue, holding the position of Chief for seven years.

In 1985, he became Executive Director of the North Carolina Fire and Rescue Commission, which handles various fire and rescue related programs, including all levels of professional certification and qualification.

In 1990, he was promoted to Deputy Commissioner of Insurance in charge of the Fire and Rescue Services Division, in addition to his duties as Executive Director.

In 1998 he was promoted to Senior Deputy Commissioner over the newly established NC Office of State Fire Marshal, which encompasses six Divisions within the Department of Insurance.

Tim has a Bachelor of Science Degree in Fire and Safety Engineering Technology, an Associate Degree in Applied Science in Electronic Engineering Technology, is a graduate of the National Fire Academy's Executive Fire Officer Program and the Institute of Governments Executive Leadership for Local Government. He serves as Chairman of the NFPA Professional Qualification Committee for Instructor and was a charter member of the Board of Governors of the International Fire Service Accreditation Congress, currently serving as Chairman. He is also a Charter member of the International Fire Code Council, which oversees model fire codes internationally.

The OSFM has a staff of 104 people who conduct plan review, provide code consultation, handle the qualification of code enforcement officials statewide, administer the State Building and Fire Codes, administer the State Manufactured Housing regulations, develop code courses, staff the State Building Code Council, teach fire and rescue training, provide support for the state fire and rescue certification programs, administer the fire and rescue grant and relief funds, and provide guidance statewide in the development of public fire education and injury prevention programs.

**PYRONTECHNICS PRESENTATION TO OS&H
COMMITTEE
NC GENERAL ASSEMBLY
3/19/03**

Mr (Madam) Chairman, members of the committee, and staff, I appreciate the opportunity to provide to you an explanation of codes and standards utilized in NC relating to pyrotechnics and interior finishes.

My primary discussion will center on the NC Building Code, including the Fire Code, Code Council, local inspection authority, and the code enforcement aspects. Let me first say that the inside display of fire works before a proximate audience is currently not allowed in NC without a permit, and interior finishes in public assemblies with flame spread ratings of those utilized in the nightclub in Rhode Island are not allowed by NC Building Code.

The NC Building Code has 12 volumes. Two of those primarily affect the use of pyrotechnics and interior finishes. The NC building code is adopted by the NC Building Code Council, currently under the APA. The BCC has representatives from architectural, engineering, and inspection related organizations, contractors, home builders, the public at large, and the fire service. They are appointed by the governor and are staffed by the OSFM within DOI.

Inspection of local non state owned facilities are handled under local authority, by code enforcement officials trained and qualified by the Code Qualifications Board. This Board is staffed by OSFM within DOI and the testing is carried out. There are various levels of enforcement officials (inspectors) and several types. There are three levels associated with Fire Inspectors.

While one Volume of the Code addresses the construction of a building and an inspection against it is required for occupancy, another Volume primarily addresses maintenance, or a continued monitoring of the facility for adherence to the code. As an example, foam insulation would not pass initial inspection for occupancy, and if added after occupancy should be caught under a fire inspection

Public Assemblies are required by the code to be inspected annually by local inspectors. This is in Section 106 of the Administrative Section of the Code.

PERMITTING

Section 105.6.15 and Section 105.6.36 of the NC Fire Prevention Code requires Operational Permits for the storage, handling, sale, or use of pyrotechnics. The permit is obtained by the applicant to conduct an operation or business for which a permit is required. 105.6.15 requires a permit for pyrotechnic special effects allowed by the code in Chapter 33 NC Fire Prevention, which covers fireworks/pyrotechnics. 105.6.36 requires and operational permit for use and handling of pyrotechnic special effects material. The Fire code references the National Fire Protection Standard NFPA 1126 for indoor pyrotechnics.

These permitting requirements are not in conflict with GS 14-413, which allows County Commissioners the authority to issue permits for public pyrotechnic displays. This authority is usually reserved for outdoor displays. Indoor displays, where reasonable distances are not established between the audience and the effects are called proximate displays or proximate audiences.

FIREWORKS REGULATED

Firework possession, storage, use, and handling are covered under Chapter 33 of the NC Fire Code. Section 3301.2 requires the permit holder to furnish a bond or certificate in an amount deemed adequate by the fire inspector. Section 3301.3 requires the permit holder to be qualified, free of drugs and alcohol. Section 3301.7 allows the inspector to seize, dispose of, etc., fireworks found in violation of Chapter 33.

Section 3308 of Chapter 33 regulates fireworks displays, including proximate audience displays and special effects. These displays are required to meet NFPA 1123 and/or 1126. NFPA 1123 covers requirements for public displays, NFPA 1126 is specifically for proximate audience displays.

(I would add here that NFPA 1, 2000 version is also enforced by OSHA, and requires these displays to meet the same standard. OSHA's penalty making far exceeds what exists within the fire inspection community)

Section 3308.2 requires that before a permit is issued, the display site must be inspected, along with plans for the display accompanied by a demonstration. These plans must include required clearances for spectators and combustibles, crowd control measures, smoke control measures, standby personnel and equipment if required by the inspector.

INTERIOR FINISHES

In section 801.2.2 it states foam plastics shall not be used as interior finish or trim except as provided in section 2603.7 by special testing under UL. Chapter 8 Table 803.4 of the NC Building Code covers Flame spread requirements for all interior finishes in all occupancies including Assembly for both sprinkled and non-sprinkled buildings.

Three classes Class A flame spread 0-25 smoke generation 0-450

Class B flame spread 26-75 smoke generation 0-450

Class C flame spread 76-200 smoke generation 0-450

Flame spread rating is required to be maintained for life of the Structure. Interior finish flame spreads are subject to inspection in the Annual Fire inspections required for assembly occupancies per Section 106 of the Fire Code.

Section 801.2.2, of the NC Building Code prohibits foam plastics such as found in Rhode Island nightclub from use as an interior finish. Chapter 26 of, NC Building Code, limits flame spread of foam plastics used in the interior of wall construction and requires foam plastics to be covered by a thermal barrier unless specifically approved and tested in accordance with Chapter 26

PENALTIES

Civil Fines or Criminal Violations

Fines for code violations or violations of orders to correct code violations listed in the NC Building or Fire Prevention Codes are included in the Administrative Volume. Code violations are spelled out as Class III misdemeanors with a fine not to exceed \$50 for each offense. Fines are civil

penalties for violations of local government ordinances, and are spelled out in statute.

General Statutes do address criminal violations of orders to correct code violations as class I misdemeanors in GS 153A-371 for counties and GS 160A-431 for cities.

Fire inspectors have the authority for summary abatement of unsafe conditions that exist in buildings when conditions are deemed hazardous to life and property spelled out in the Fire Code. The Code Official in charge of the incident is authorized to abate, summarily, such hazardous conditions that are in violation of the code. This is in Section 110.3. While this authority appears in the code, it is offered to Counties in GS 153.372 under Equitable Enforcement, and Cities under GS 160A-432.

INSPECTION ISSUES

Features for prevention of the nightclub tragedy in NC

1. The minimum periodic fire inspection schedule calls for an annual inspection of assembly occupancies (Fire Code Section 106). Fire inspectors routinely review facilities for locked or blocked exit doors, "Exit" signs and emergency lights, required portable fire extinguishers, and other life safety hazards. The inspector, through experience, would catch severe potentials for overcrowding (such as a large building with only two small doors, or doors that are too close together), and would work with the building inspector to post occupancy limits for the building (Administrative Code Section 309). The inspector would also review the testing and maintenance records of fire protection systems, including sprinklers and fire alarm systems if present. The fire inspector would also be looking in a general way at the interior finish, curtains, and decorations present in the nightclub (Building Code Chapter 8), and would probably comment on obvious hazardous items such as plastic or foam (the foam or other finish materials might have been caught, although often these items are painted and are not obvious).
2. The facility is required to have a written evacuation plan (Fire Code Section 404) showing the occupant load, seating diagram

and location of exits and of aisles leading thereto. Employees or attendants of places of public assembly are to be trained (Fire Code Section 406) and drilled in the duties that are to be performed in case of fire, panic or other emergency (Fire Code Section 405), and be trained in the proper use of portable fire extinguishers and or other manual suppression (such as hoses)(Fire Code Section 406). Many jurisdictions are performing inspections at night, and at least one jurisdiction (Greenville) questions the nightclub staff of their duties, permissible occupant load, location of exits, etc. and documents their answers as part of the inspection report. Inadequate training can be a reason for enforcement action.

3. For those nightclubs that are required by size and construction to have sprinklers, the fire inspector would review maintenance records to insure that the sprinkler system had been serviced to be operable (Fire Code Chapter 9). The 1999 Building Code required sprinklers for wood construction over 6000 square feet and bare metal construction over 12,000 square feet. The 2002 Building Code requires sprinklers for new nightclubs that have an area of 5000 square feet, or an occupant load of 300 or more persons, or on a level other than the ground floor.
4. For clubs with an occupancy of 300 persons or more (2100 square feet if closely packed, 4500 square feet if tables and chairs are present) a manual fire alarm system with distinctive audible and visual notification devices is required by the 1999 Building Code. The 2002 Building code also requires a manual fire alarm for clubs with an occupancy of 300 persons or more.
5. The Building code Chapter 8 has requirements for the rating of flame spread of materials used to cover the interior surfaces, curtains, and decorations of assembly occupancies. These requirements would slow the growth of a fire to allow a longer time for egress. (Editorial note: The Rhode Island fire is reported to have ignited and spread on "Egg-crate" foam used for sound deadening. This type of material probably does not meet the flame-spread requirements for an assembly occupancy.)

6. The 2002 Fire Prevention Code has a mandatory permit requirement for the use of storage of pyrotechnics and fireworks (Fire Code Sections 105.6.15 and 105.6.36). Most fire inspection departments will conduct an inspection prior to issuing a pyrotechnics permit, and many will require an actual display of the pyrotechnics to be used. The Fire Prevention Code references a National Fire Protection Association (NFPA) standard for the use of Indoor pyrotechnics (NFPA 1126), which gives guidance on use, operator qualifications and experience, and safety precautions.

3.19.03

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

Name of Committee

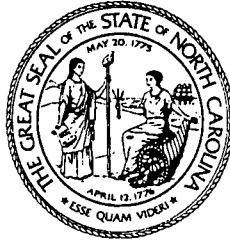
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Camille Stell	Kennedy Covington
Steen Lamm	UTU
Richard Westbrook	UTU
Mike Okun	N.C. State AFL-CIO
PGP	NCFB
K. LEONARD	N.C. DOL
R. Paul Wilms	NCHBA
Doug Lassiter	NCSTA
Ken Melton	Alley Associates
FRANK W. FOLGER	Dept. of Insurance



North Carolina House of Representatives

Committee on Occupational Safety and Health

Legislative Office Building, Room 415

Agenda

April 2, 2003

10:00 a.m.

Call to Order

Representative Wayne Goodwin, Chair

Introduction to HB 609 – "AN
ACT TO ENHANCE SAFETY
LAWS PERTAINING TO THE
ELEVATOR AND AMUSE-
MENT DEVICE ACTS OF
AMERICA"

Representative Rex Baker, Primary Sponsor

Discussion

Committee Membership

Call for Action

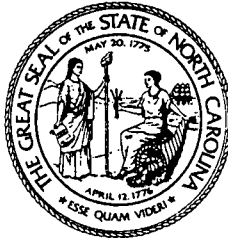
Representative Wayne Goodwin, Chair

Discussion of Possible Indoor
Pyrotechnics Legislation

Bill Gilkerson and Hal Pell, Staff Counsels

Questions and Answers

Adjournment



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

April 2, 2003

The House Committee on Occupational Safety and Health met on April 2, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Baker, Blackwood, Cole, Dickson, Goodwin, Hunter and McHenry.

Committee Chair Representative Wayne Goodwin called the meeting to order at 10:05 AM and introduced the Sergeant at Arms, William Sullivan and Thomas Wilder, and the pages, Heather McLeod and Carey Sitze.

The Chair moved to introduce the proposed committee substitute (PCS) for HB 609 (AN ACT TO ENHANCE SAFETY LAWS PERTAINING TO THE ELEVATOR AND AMUSEMENT DEVICE ACTS OF AMERICA) and was seconded by Representative McHenry. The Chair introduced Representative Baker to explain the PCS for HB 609. Following Representative Baker's presentation, the Chair recognized Staff Counsel Hal Pell to discuss the NCGS relevant to the PCS and to give an analysis (attached). Barbara Jackson, counsel for the North Carolina Department of Labor, was recognized to distribute Chapter 95, Article 14B, (Amusement Device Safety Act of North Carolina) of the North Carolina General Statutes (attached).


Representative Blackwood was recognized by the Chair and moved to amend the PCS on page 2, line 6, by inserting the word "knowingly" between the words "to": and "permit." Representative McHenry seconded the motion. Upon motion from the Chair, the amendment was adopted. The Chair recognized Representative Cole and moved to amend the PCS on page 1, line 15, by deleting "30 days" and inserting the words "the previous twelve months." Representative Blackwood seconded the motion. Upon motion from the Chair, the amendment was adopted. The Chair recognized Representative McHenry who moved to amend the PCS on page 3, line 13, by inserting the following sentence after the word "date": Section 2 of this act becomes effective one year after this bill becomes law. Representative Cole seconded the motion. Upon motion from the Chair, the amendment was adopted.

Representative McHenry moved that PCS 609 be adopted, the name changed from AN ACT TO ENHANCE SAFETY LAWS PERTAINING TO THE ELEVATOR AND

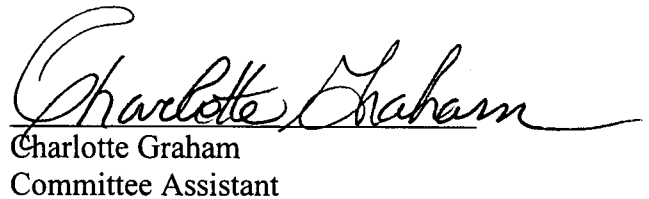
AMUSEMENT DEVICE ACTS OF NORTH CAROLINA to AN ACT TO ENHANCE LAWS PERTAINING TO THE AMUSEMENT DEVICE SAFETY ACT OF NORTH CAROLINA, given a favorable report, be re-referred to the House Committee on Judiciary II and that the original bill be given an unfavorable report. Upon second by Representative Hunter, the motion passed.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:50 AM.

Respectfully submitted,



Representative Wayne Goodwin
Chair



Charlotte Graham
Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative **Goodwin** (Chair) for the Committee on **OCCUPATIONAL SAFETY
AND HEALTH.**

- ☐ Committee Substitute for
H.B. 609 A BILL TO BE ENTITLED AN ACT TO ENHANCE SAFETY LAWS
PERTAINING TO THE ELEVATOR AND AMUSEMENT DEVICE ACTS 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 JUDICIARY II.
- ☐ 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)

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution 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 _____).

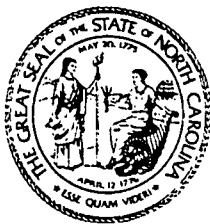
____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).

____ 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.



BILL ANALYSIS

HOUSE BILL 609: Enhance Amusement Device Safety.

Committee: House Occupational Safety &
Health Committee

Date: April 2, 2003

Version: PCS H609-CSRK-14 [v.2]

Introduced by: Rep. Baker

Summary by: H. Alan Pell

Committee Counsel

SUMMARY: *This bill would make remove exemptions for certain devices or attractions from the Amusement Device Safety Act [ADSA], modify provisions relating to notification of use and maintenance of devices, prohibit operation of any device by an impaired operator, and provide penalties for certain provisions. Section 5(i) is effective on December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.*

BILL ANALYSIS:

Section 1. The ADSA does not apply to any device that does not normally require the supervision or services of an operator. This section would delete a provision that exempts the following devices and attractions from the ADSA when they are not located in an amusement park or carnival area:

- Hot or cold air inflatable devices
- Bumper boats
- Simulator devices that simulate the movement shown on various video tapes.

Under current law, if any one of the foregoing devices would normally require the supervision or services of an operator, but it is not located in an amusement or carnival area, it is not subject to the provisions of the ADSA. This amendment would make these devices (if they require an operator) subject to the ADSA, regardless of where they are located.

Section 2. This section would require a device owner to maintain, for 180 days, a signed record of required inspection and testing. The current requirement is 30 days.

Section 3. The bill would:

- Require written notice of a planned schedule of operation to be received by the Commissioner of Labor at least 10 days prior to the first planned date of operation or use. This notice is required after initial assembly or reassembly of any device. The current requirement is five days.
- Delete the authorization to give notice of unplanned use by telephone or telegraph to the Commissioner of Labor. Consequently, an owner could not, after initial assembly or reassembly, operate any device for at least 10 days after notifying the Commissioner.

Section 4. This section would amend the law to provide that no operator shall operate amusement device equipment while under the influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a) ["alcohol, controlled substance under Chapter 90 . . . any other drug or psychoactive substance capable of impairing a person's physical or mental faculties . . .]. Any person permitting the operation of a device while the operator was under the influence would also be in violation of this provision.

(over)

HOUSE BILL 609

Page 2

Section 5. This section would amend the penalty provisions of the act.

- Persons violating the operator requirements under G.S. 95-111.11(a) would be subject to a maximum penalty of \$500.
- Persons either operating devices while under the influence, or permitting the operation of a device by an operator who was under the influence, would be subject to a maximum penalty of \$1,000.
- Any person who is in willful violation of any provision in the ADSA, and causes the death of any person, would be guilty of a Class 2 misdemeanor and a maximum penalty of \$10,000 on a first offense, and a Class 1 misdemeanor with a maximum penalty of \$20,000 on a second offense. Prosecution by the State for any offense is not precluded by this section.

Section 6. Section 5(i) is effective on December 1, 2003, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

H609-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 609
PROPOSED COMMITTEE SUBSTITUTE H609-PCS70242-RK-17

Short Title: Enhance Amusement Device Safety.

(Public)

Sponsors:

Referred to:

March 24, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO ENHANCE LAWS PERTAINING TO THE AMUSEMENT DEVICE
3 SAFETY ACT OF NORTH CAROLINA.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 95-111.2(b) reads as rewritten:

6 "(b) This Article shall not apply to any device which does not normally require the
7 supervision or services of an operator. ~~Unless they are located in an amusement park or~~
8 ~~carnival area, the following devices or attractions are exempt from this Article:~~

- 9 (1) Hot or cold air inflatable devices;
10 (2) Bumper boats; and
11 (3) Simulator devices that simulate the movement shown on various video
12 tapes."

13 SECTION 2. G.S. 95-111.5(b) reads as rewritten:

14 "(b) An owner of a device subject to the provisions of this Article, or his
15 authorized agent, is hereby required to maintain for at least ~~30 days~~ the previous 12
16 months a signed record of the required pre-opening inspection and test and such other
17 pertinent information as the Commissioner may require by rule or regulation."

18 SECTION 3. G.S. 95-111.8 reads as rewritten:

19 "§ 95-111.8. Location notice.

20 No person shall operate for the public or permit the operation for the public any
21 device subject to the provisions of this Article after initial assembly or after reassembly
22 at any location within this State without first notifying the Commissioner of the
23 intention to operate for the public. Written notice of a planned schedule of operation or
24 use shall be received at least ~~five~~ 10 days prior to the first planned date of operation or
25 use. ~~Notice of unscheduled use shall be given immediately to the Commissioner by~~
26 ~~telephone or telegraph."~~

27 SECTION 4. G.S. 95-111.11 reads as rewritten:

28 "§ 95-111.11. Operators.

1 (a) Any operator of a device subject to the provisions of this Article shall be at
2 least 18 years of age. An operator shall operate no more than one device at any given
3 time. An operator shall be in attendance at all times the device is in operation.

4 (b) No person shall operate any amusement device equipment while under the
5 influence of alcohol or any other impairing substance as defined by G.S. 20-4.01(14a).
6 It shall be a violation of this subsection to knowingly permit the operation of any
7 amusement device while the operator is under the influence of an impairing substance."

8 SECTION 5. G.S. 95-111.13 reads as rewritten:

9 "§ 95-111.13. Violations; civil penalties; appeal.

10 (a) Any person who violates G.S. 95-111.7(a) or (b) (Operation without
11 certificate; operation not in accordance with Article or rules and regulations) shall be
12 subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day
13 each device is so operated or used.

14 (b) Any person who violates G.S. 95-111.7(c) (Operation after refusal to issue or
15 after revocation of certificate) or G.S. 95-111.10(c) (Reports required) or G.S.
16 95-111.12 (Liability insurance) shall be subject to a civil penalty not to exceed five
17 hundred dollars (\$500.00) for each day each device is so operated or used.

18 (c) Any person who violates G.S. 95-111.8 (Location notice) shall be subject to a
19 civil penalty not to exceed five hundred dollars (\$500.00) for each day any device is
20 operated or used without the location notice having been provided.

21 (d) Any person who violates the provisions of G.S. 95-111.10(d) (Reports
22 required) or knowingly permits the operation of an amusement device in violation of
23 G.S. 95-111-11(a) (Operator requirements) shall be subject to a civil penalty not to
24 exceed five hundred dollars (\$500.00).

25 (e) Any person who violates G.S. 95-111.9 (Operation of unsafe device) or G.S.
26 95-111.11(b) (Operation of an amusement device while impaired) shall be subject to a
27 civil penalty not to exceed one thousand dollars (\$1,000).

28 (f) In determining the amount of any penalty ordered under authority of this
29 section, the Commissioner shall give due consideration to the appropriateness of the
30 penalty with respect to the size of the business of the person being charged, the gravity
31 of the violation, the good faith of the person and the record of previous violations.

32 (g) ~~The determination~~ of the amount of the penalty by the Commissioner shall be
33 final, unless within 15 days after receipt of notice thereof by certified mail, the person
34 charged with the violation takes exception to the determination, in which event final
35 determination of the penalty shall be made in an administrative proceeding and in a
36 judicial proceeding pursuant to Chapter 150B of the General Statutes, the
37 Administrative Procedure Act.

38 (h) The Commissioner may file in the office of the clerk of the superior court of
39 the county wherein the person, against whom a civil penalty has been ordered, resides,
40 or if a corporation is involved, in the county wherein the corporation maintains its
41 principal place of business, or in the county wherein the violation occurred, a certified
42 copy of a final order of the Commissioner unappealed from, or of a final order of the
43 Commissioner affirmed upon appeal. Whereupon, the clerk of said court shall enter
44 judgment in accordance therewith and notify the parties. Such judgment shall have the

1 same effect, and all proceedings in relation thereto shall thereafter be the same, as
2 though said judgment had been rendered in a suit duly heard and determined by the
3 superior court of the General Court of Justice.

4 (i) Any person who willfully violates any provision of this Article, and the
5 violation causes the death of any person, shall be guilty of a Class 2 misdemeanor,
6 which may include a fine of not more than ten thousand dollars (\$10,000); except that if
7 the conviction is for a violation committed after a first conviction of such person, the
8 person shall be guilty of a Class 1 misdemeanor which may include a fine of not more
9 than twenty thousand dollars (\$20,000). This subsection shall not prevent any
10 prosecuting officer of the State of North Carolina from proceeding against such person
11 on a prosecution charging any degree of willful or culpable homicide."

12 SECTION 6. Section 5(i) of this act is effective on December 1, 2003, and
13 applies to offenses committed on or after that date. Section 2 of this act becomes
14 effective one year after this bill becomes law. The remainder of this act is effective
15 when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

FORM 9

H.B. No. 609

DATE 2 April 03

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE H609-CSRK-H [V.1]

Rep.) _____
) _____
 Sen.) _____

1 moves to amend the bill on page 2, line 6

2 () WHICH CHANGES THE TITLE

3 by inserting the word "knowingly" between
 4 the words "to" and "permit",

5 _____
 6 and on page 2, line 22, by
 7 inserting the word "knowingly" between
 8 the words "or" and "permits".

9 _____
 10 _____
 11 _____
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____

SIGNED Curtis Blackwood

ADOPTED ☒ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

FORM 9

H.B. No. 609

DATE 2 April 03

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE H609-CSRX-14 [v.1]

Rep.) Cole
Sen.) _____

1 moves to amend the bill on page 1, line 15

2 () WHICH CHANGES THE TITLE

3 by deleting "30-180" days" and inserting
4 the words "the previous twelve months".

5 _____

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Nelson Cole

ADOPTED ☒ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

SESSION No. _____

FORM 9

H. B. No. 609

DATE 4/2/03

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE 4609-CSRK-14 [V. 1]

Rep.) _____
Sen.) _____

1 moves to amend the bill on page 3, line 13

2 () WHICH CHANGES THE TITLE

3 by inserting the following sentence after

4 the word "date.":

5 Section 2 of this act becomes

6 effective

7 one year after this bill becomes law.

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

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18 _____

19 _____

SIGNED

[Signature]

ADOPTED ☒ FAILED ☐ TABLED ☐

XIV. AMUSEMENT DEVICE SAFETY ACT OF NORTH CAROLINA.

Chapter 95, Article 14B.

For information on the Amusement Device Safety Act of North Carolina, contact the Elevator and Amusement Device Bureau, 4 W. Edenton St., Raleigh, NC 27601-1092, (919) 807-2770 or 1-800-NC-LABOR.

§95-111.1. Short title and legislative purpose.

- (a) This Article shall be known as the "Amusement Device Safety Act of North Carolina".
- (b) The General Assembly finds that although most amusement devices are free from defect and operated in a safe manner, those which are not impose a substantial probability of serious and preventable injury to the public. Protection of the public from exposure to such unsafe conditions and the prevention of injuries is in the best interest and welfare of the people of the State.
- (c) It is the intent of this Article that amusement devices shall be designed, constructed, assembled or disassembled, maintained, and operated so as to prevent injuries. (1985 (Reg. Sess., 1986), c. 990, s. 2.)

§95-111.2. Scope.

- (a) This Article shall govern the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration, relocation and investigation of accidents involving amusement devices.
- (b) This Article shall not apply to any device which does not normally require the supervision or services of an operator. Unless they are located in an amusement park or carnival area, the following devices or attractions are exempt from this Article:
- (1) Hot or cold air inflatable devices;
 - (2) Bumper boats; and
 - (3) Simulator devices that simulate the movement shown on various video tapes. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1991, c. 178, s. 1.)

§95-111.3. Definitions.

- (a) The term "amusement device" shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. The term shall include but not be limited to roller coasters, Ferris wheels, merry-go-rounds, glasshouses, waterslides, and walk-through dark houses. This term shall not include the following:
- (1) Devices operated on a river, lake, or any other natural body of water;
 - (2) Wavepools;
 - (3) Roller skating rinks;
 - (4) Ice skating rinks;
 - (5) Skateboard ramps or courses;
 - (6) Mechanical bulls;
 - (7) Buildings or concourses used in laser games;
 - (8) All terrain vehicles;
 - (9) Motorcycles;
 - (10) Bicycles; and
 - (11) Mopeds.
- (b) The term "amusement park" shall mean any tract or area used principally as a permanent location for amusement devices.
- (b1) The term "carnival area" shall mean any area, tract, or structure that is rented, leased, or owned as a temporary location for amusement devices.
- (c) The term "Commissioner" shall mean the North Carolina Commissioner of Labor or his authorized representative.
- (d) The term "Director" shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.
- (e) The term "operator" shall mean any person having direct control of the operation of an amusement device. The term "operator" shall not include any person on the device for the purpose of receiving amusement, pleasure, thrills, or excitement.

(f) The term "owner" shall mean any person or authorized agent of such person who owns an amusement device or in the event such device is leased, the lessee. The term "owner" also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

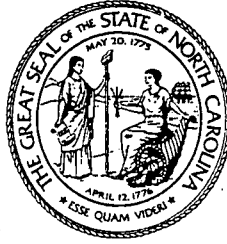
(g) The term "person" shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

(h) The term "waterslide" shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet. (1985 (Reg. Sess., 1986), c. 990, s. 2; 1987, c. 864, s. 90(a); 1991, c. 178, s. 2.)

§95-111.4. Powers and duties of Commissioner.

The Commissioner of Labor is hereby empowered:

- (1) To delegate to the Director of the Elevator and Amusement Device Division such powers, duties and responsibilities as the Commissioner determines will best serve the public interest in the safe operation of amusement devices;
- (2) To supervise the Director of the Elevator and Amusement Device Division;
- (3) To adopt, modify, or revoke such rules and regulations as are necessary for the purpose of carrying out the provisions of this Article including, but not limited to, those governing the design, construction, installation, plans review, testing, inspection, certification, operation, use, maintenance, alteration and relocation of devices subject to the provisions of this Article. The rules and regulations promulgated pursuant to this rulemaking authority shall conform with good engineering and safety standards, formulas and practices;
- (4) To enforce rules and regulations adopted under authority of this Article;
- (5) To inspect and have tested for acceptance all new and relocated devices subject to the provisions of this Article. Relocated amusement devices shall be inspected upon reassembly at each new location within this State; provided that the Commissioner may provide for less frequent inspections when he determines that the device is of such a type and its use is of such a nature that inspection less often than upon each reassembly would not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (6) To inspect amusement devices which have been substantially rebuilt or substantially modified so as to change the original action, structure or capacity of the device;
- (7) To make maintenance and periodic inspections and tests of all devices subject to the provisions of this Article. Devices located in amusement parks shall be inspected at least once annually;
- (8) To issue certificates of operation which certify for use such devices as are found to be in compliance with this Article and the rules and regulations promulgated thereunder;
- (9) To have reasonable access, with or without notice, to the devices subject to the provisions of this Article during reasonable hours, for purposes of inspection or testing;
- (10) To obtain an Administrative Search and Inspection Warrant in accordance with the provisions of Article 4A of Chapter 15 of the General Statutes;
- (11) To investigate accidents involving devices subject to the provisions of this Article to determine the cause of such accident, and he shall have full subpoena powers in conducting such investigation;
- (12) To institute proceedings in the civil courts of this State, when a provision of this Article or the rules and regulations promulgated thereunder has been violated;
- (13) To adopt, modify or revoke rules and regulations governing the qualifications of inspectors;
- (14) To grant exceptions from the requirements of the rules and regulations promulgated under authority of this Article and to permit the use of other devices when such exceptions and uses will not expose the public to an unsafe condition likely to result in serious personal injury or property damage;
- (15) To require that before any device subject to the provisions of this Article is erected in this State, or before any additions or alterations which substantially change such device are made, or before the physical spacing between such devices is changed, the owner or his authorized agent shall file with the Commissioner a written notice of his intention to do so and the type of device involved. Should circumstances necessitate, the Commissioner may require that such owner or his authorized agent furnish a copy of the plans, diagrams, specifications or stress analyses of such device before the inspection of same. When such plans, diagrams, specifications or stress analyses are requested by the Commissioner, he shall review them within 10 days of receipt, and upon approval, he shall authorize the device for use by the public;
- (16) To prohibit the use of any device subject to the provisions of this Article which is found upon inspection to expose the public to an unsafe condition likely to cause personal injury or property damage. Such device shall be made operational only upon the Commissioner's determination that such device has been made safe;



North Carolina House of Representatives

Committee on Occupational Safety and Health

Legislative Office Building, Room 415

Agenda

April 16, 2003

10:00 a.m. and 1:00 p.m.

Call to Order

Representative Wayne Goodwin, Chair

HB 978 – AN ACT TO ALLOWING THE NORTH CAROLINA VETERINARY BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL –

Representative Nelson Cole

HB 919 – AN ACT TO ALLOW TAX CREDITS FOR VOLUNTARY WORKPLACE SAFETY EFFORTS BY EMPLOYERS –

Representatives Goodwin and McHenry

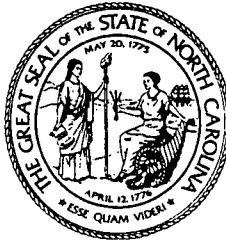
HB 1129 – AN ACT TO REVISE SERVICE REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE –

Representatives Fox and West

HB 1181 – WORKPLACE SAFETY/MULTIPLE VIOLATIONS –

Representative Goodwin

Adjournment



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

April 16, 2003

The House Committee on Occupational Safety and Health met on April 16, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Blackwood, Cole, Dickson, Goodwin, Hunter, McHenry and West.

Committee Chair Representative Wayne Goodwin called the meeting to order at 10:10 AM and introduced the Sergeant of Arms, Bill Sullivan and Aaron Woodlief, and the page, Joel Smith of Wilson County (sponsored by Representative Farmer-Butterfield).

The chair recognized Representative Cole to explain House Bill 978 – AN ACT TO ALLOW THE NORTH CAROLINA VETERINARY BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL. Representative Cole called on George Hearn, representing the NC Veterinary Medical Board, to assist in explaining the bill. David Marshall of the NC Veterinary Medical Board was recognized to speak on the bill. Representative Cole was recognized to put forward an amendment. Upon motion of Representative McHenry, the amendment was adopted, the Committee substitute given a favorable report and the original bill given an unfavorable report.

The chair appointed Representative Blackwood to serve as acting chair while he and Representative McHenry presented House Bill 919 – AN ACT TO ALLOW TAX CREDITS FOR VOLUNTARY WORKPLACE SAFETY EFFORTS BY EMPLOYERS. The acting chair recognized Representative Goodwin to explain the bill and subsequently Representative McHenry to further explain the bill. The acting chair recognized John Hoomani, deputy general counsel, NC Department of Labor, to comment on the bill. Representative Cole moved that the bill be given a favorable report. Upon voice vote, the motion unanimously passed.

The chair recognized Representative Fox to explain HB 1129 – AN ACT TO REVISE SERVICE REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE. Representative West was recognized to put forth an amendment. Bill Gilkeson, staff counsel, was recognized to explain the amendment. Representative West moved that the amendment be adopted. Upon voice

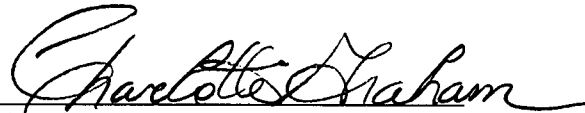
vote, the amendment was adopted. The chair recognized Becky Brown, fiscal officer with the NC Department of Labor, to comment on the bill. Representative McHenry moved for favorable adoption of the committee substitute and that the original bill be given an unfavorable report. Upon voice vote, the motion passed.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:55 AM.

Respectfully submitted,



Representative Wayne Goodwin
Chair



Charlotte Graham
Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

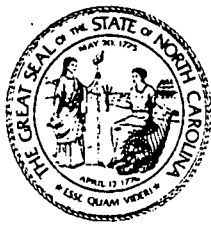
By Representative **Wayne Goodwin** (Chair) for the Committee on **Occupational Safety and Health**.

- ☐ Committee Substitute for
H.B. 978 A BILL TO BE ENTITLED AN ACT ALLOWING THE NORTH CAROLINA
VETERINARY BOARD TO ENTER INTO AGREEMENTS WITH ORGANIZATIONS
THAT HAVE DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.
- ☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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.



HOUSE BILL 978:

Veterinary Bd. Agreements/Impaired Vets.

BILL ANALYSIS

Committee: House Occupational Safety and Health

Date: April 16, 2003

Version: First Edition

Introduced by: Rep. Cole

Summary by: H. Alan Pell

Committee Co-Counsel

SUMMARY: *This act adds a new statute that authorizes the North Carolina Veterinary Medical Board to enter into agreements with organizations that have developed programs for impaired veterinary personnel. The agreements would require the Board to disseminate relevant information to the organization; and for the organization to conduct investigations and make reports to the Board. The organization would be required to establish and maintain programs for the identification, review, and evaluation of a veterinarian or veterinarian technician to function in their occupation. The organization would also be required to establish treatment and rehabilitation programs.*

BILL ANALYSIS: Section 1

Subparagraph (a): Authorizes the Board to enter into agreements with organization that have developed programs for impaired veterinary personnel. Activities to be covered in the agreement include: (1) investigation; (2) review and evaluation of records; (3) reports; (4) complaints; (5) litigation; and (6) information about practices of veterinarians that relate to impairment.

Subparagraph (b): The agreement must include provisions (1) for the Board to provide relevant information to the organization; (2) for the organization to conduct any investigation, review, or evaluation in an expeditious manner; (3) for the assurance of confidentiality of nonpublic information; (4) for the organization to make reports of investigations to the Board; and (5) for providing basic due process for veterinary personnel.

Subparagraph (c): The organizations must establish a program that evaluates veterinarians or veterinarian technicians for the ability to function in their occupation. The organization must also provide programs for treatment and rehabilitation. The Board may (is not required) to adopt rules pursuant to Chapter 150B to apply to the operation of impaired veterinary personnel programs.

Subparagraph (d): Organizations that have entered agreements with the Board must report detailed information concerning a veterinarian or a vet. tech. (1) who is an imminent danger to the public, to patients, or themselves; (2) who refuses to cooperate with the program; refuses to submit to treatment; or remains impaired after treatment and exhibits professional incompetence; or (3) or may be the subject of other disciplinary action.

Subparagraph (e): Confidential information concerning program participants is not discoverable in any civil case, nor subject to disclosure as a public record. No person participating in a program can be required to disclose, in a civil case, any information acquired or developed solely in the course of the program.

Subparagraph (f): Activities conducted in good faith under a section program are not grounds for civil action under any State law. The activities are deemed State directed and constitute "State action" for anti-trust law purposes.

Section 2: The act is effective when it becomes law.

H978-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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1

HOUSE BILL 978

Short Title: Veterinary Bd. Agreements/Impaired Vets.

(Public)

Sponsors: Representatives Cole; Gillespie, Goforth, and Hill.

Referred to: Occupational Safety and Health.

April 9, 2003

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA VETERINARY BOARD TO
ENTER INTO AGREEMENTS WITH ORGANIZATIONS THAT HAVE
DEVELOPED PROGRAMS FOR IMPAIRED VETERINARY PERSONNEL.

The General Assembly of North Carolina enacts:

SECTION 1. Article 11 of Chapter 90 of the General Statutes is amended by
adding a new section to read:

"§ 90-187.15. Board agreement for programs for impaired veterinary personnel.

(a) The Board may enter into agreements with organizations that have developed programs for impaired veterinary personnel. Activities to be covered by these agreements may include investigation, review, and evaluation of records, reports, complaints, litigation, and other information about the practices or the practice patterns of veterinary personnel licensed or registered by the Board as these matters may relate to impaired veterinary personnel. Organizations having programs for impaired veterinary personnel may include a statewide supervisory committee or various regional or local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired veterinary personnel organizations to: (i) receive relevant information from the Board and other sources; (ii) conduct any investigation, review, or evaluation in an expeditious manner; (iii) provide assurance of confidentiality of nonpublic information and of the process; (iv) make reports of investigations and evaluations to the Board; and (v) implement any other related activities for operating and promoting a coordinated and effective process. The agreement shall include provisions assuring basic due process for veterinary personnel who become involved.

(c) Organizations entering into agreements with the Board shall establish and maintain a program for impaired veterinary personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those veterinarians or veterinary technicians to function as veterinarians or veterinary technicians and provide programs for treatment and rehabilitation. The Board may

1 provide funds for the administration of these impaired veterinary personnel peer review
2 programs. The Board may adopt rules pursuant to Chapter 150B of the General Statutes
3 to apply to the operation of impaired veterinary personnel programs, with provisions
4 for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures
5 for receipt and use of information of suspected impairment; (iv) procedures for
6 intervention and referral; (v) arrangements for monitoring treatment, rehabilitation,
7 posttreatment support, and performance; (vi) reports of individual cases to the Board;
8 (vii) periodic reporting of statistical information; (viii) assurance of confidentiality of
9 nonpublic information and of the process; and (ix) other necessary measures.

10 (d) Upon investigation and review of a veterinarian licensed by the Board or a
11 veterinary technician registered with the Board, or upon receipt of a complaint or other
12 information, an impaired veterinary personnel organization that enters into an
13 agreement with the Board shall report to the Board detailed information about any
14 veterinarian licensed or veterinary technician registered by the Board if:

15 (1) The veterinarian or veterinary technician constitutes an imminent
16 danger to the public, to patients, or to himself or herself.

17 (2) The veterinarian or veterinary technician refuses to cooperate with the
18 program, refuses to submit to treatment, or is still impaired after
19 treatment and exhibits professional incompetence.

20 (3) It reasonably appears that there are other grounds for disciplinary
21 action.

22 (e) Any confidential information or other nonpublic information acquired,
23 created, or used in good faith by an impaired veterinary personnel organization or the
24 Board regarding a participant pursuant to this section shall remain confidential and shall
25 not be subject to discovery or subpoena in a civil case, nor subject to disclosure as a
26 public document by the Board pursuant to Chapter 132A of the General Statutes. No
27 person participating in good faith in an impaired veterinary personnel program
28 developed under this section shall be required in a civil case to disclose any
29 information, including opinions, recommendations, or evaluations, acquired or
30 developed solely in the course of participating in the program.

31 (f) Impaired veterinary personnel activities conducted in good faith pursuant to
32 any program developed under this section shall not be grounds for civil action under the
33 laws of this State, and the activities deemed to be State-directed and sanctioned shall
34 constitute "State action" for the purposes of application of antitrust laws."

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

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative **Wayne Goodwin** (Chair) for the Committee on **Occupational Safety and Health**.

☐ Committee Substitute for

H.B. 919 A BILL TO BE ENTITLED AN ACT TO ALLOW INCOME TAX CREDITS
FOR VOLUNTARY WORKPLACE SAFETY EFFORTS BY EMPLOYERS.

☒ 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.

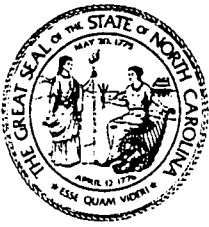
☐ With an indefinite postponement report, with a Minority Report attached.

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

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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.



HOUSE BILL 919: Workplace Safety Tax Credits.

BILL ANALYSIS

Committee: Occupational Safety and Health
Date: April 16, 2003
Version: First

Introduced by: Reps. Goodwin and McHenry
Summary by: H. Alan Pell
Committee Co-Counsel

SUMMARY: *This act would establish a tax credit for expenditures relating to workplace safety. The act is effective for taxable years beginning on or after January 1, 2004.*

BILL ANALYSIS:

Section 1:

Subparagraph (a). Provides that an eligible employer may take a credit equal to a workplace safety expenditure.

Subparagraph (b). Provides definitions of "eligible employer", "eligible workplace safety expenditure", and "serious violation." A serious violation is defined as set forth in the Occupational Safety and Health Act. Eligible expenditures for the tax credit include:

1. Expenditures to eliminate workplace hazards in order to attain N.C. Dept. of Labor certification under a voluntary recognition program;
2. Expenditures to prepare a workplace and application for NCDOL certification;
3. Expenditures to eliminate workplace hazards identified through the NCDOL's free consultation program.

Section 2: This section deletes the sunset provision that was applicable to the previous statute with the same number as the statute in this act. The previous statute's sunset date occurred on January 1, 2002.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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1

HOUSE BILL 919*

Short Title: Workplace Safety Tax Credits.

(Public)

Sponsors: Representatives Goodwin and McHenry (Primary Sponsors).

Referred to: Occupational Safety and Health, if favorable, Finance.

April 8, 2003

A BILL TO BE ENTITLED
AN ACT TO ALLOW INCOME TAX CREDITS FOR VOLUNTARY WORKPLACE
SAFETY EFFORTS BY EMPLOYERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-129.16 is reenacted and rewritten to read:

"§ 105-129.16. Workplace safety tax credit.

(a) Credit. – An eligible employer that makes eligible workplace safety expenditures during the taxable year is allowed a credit equal to the amount of the expenditures.

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

(1) Eligible employer. – An employer that certifies that, as of the time the employer first claims the credit, at the business location with respect to which the credit is claimed, the employer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations.

(2) Eligible workplace safety expenditures. – Any of the following expenditures unless the expenditure was made to address a violation for which the employer was cited:

a. Expenditures to eliminate workplace hazards in order to attain certification under a North Carolina Department of Labor voluntary recognition program.

b. Expenditures to prepare an application and prepare the workplace for certification under a North Carolina Department of Labor voluntary recognition program.

c. Expenditures to eliminate workplace hazards identified through the North Carolina Department of Labor's free consultation program.

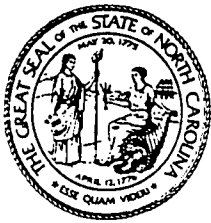
(3) Serious violation. – Defined in G.S. 95-127."

1 **SECTION 2.** G.S. 105-129.15A reads as rewritten:

2 "**§ 105-129.15A. Sunset.**

3 ~~G.S. 105-129.16 is repealed effective for business property placed in service on or~~
4 ~~after January 1, 2002. The remainder of this~~This Article is repealed effective January 1,
5 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in
6 service on or after January 1, 2006."

7 **SECTION 3.** This act becomes effective for taxable years beginning on or
8 after January 1, 2004.



HOUSE BILL 1129: 2003 Omnibus Labor Law Changes.

BILL ANALYSIS

Committee: Occupational Safety and Health
Date: April 16, 2003
Version: First Edition

Introduced by: Representatives Fox and West
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *House Bill 1129 changes makes several changes in Chapter 95, the Labor statute, notably to allow notice by other kinds of carriers than mail, to abolish the Private Personnel Services Advisory Council, and to charge applicants for private personnel services licenses some of the cost of processing the licenses. Effective January 1, 2003.*

Sections 1-7 – Amends several labor statutes to allow notice to be served, not only by certified mail, but also by a delivery service designated by the U.S. Secretary of the Treasury under the Internal Revenue Code. 26 U.S.C. § 7502(f)(2). The Code authorizes the Secretary to designate any service that meets at least 3 criteria:

- Is available to the general public.
- Is at least as timely and reliable on a regular basis as the U.S. mail.
- Records electronically or on its cover the date on which the item to be delivered was given to the delivery service.

The General Assembly has adopted this U.S. Treasury-designated delivery in Rule 4 of the Rules of Civil Procedure.

Section 8 --- Repeals G.S. 95-25.3A, which permitted an employer to pay an employee a "training wage" rather than the minimum wage between the dates of January 1, 1992, and April 1, 1993. The 1991 bill that enacted the statute did not contain an expiration date, so it is still on the books. But it hasn't applied to anyone for 10 years, and the Department of Labor felt it was causing confusion and should be repealed.

Section 9 --- Amends the licensing statute for private personnel services to do 2 things:

- Charge the applicant for the newspaper notice the Department must take out and the background investigation the Department must make as part of processing each application.
- Gives the Department more time to process an application: 60 days after the application is received (rather than the current 30 days), or if the investigation takes longer than that, a maximum of 75 days (rather than the current 45).

Sections 10-11 – Abolishes the Private Personnel Service Advisory Council, a 12-member body charged with advising the Commissioner of Labor on the regulation of private personnel services and approving rules adopted by the Commissioner.

Section 12 --- Amends G.S. 95-47.9, the enforcement statute for private personnel services, to adapt it to Chapter 150B, the Administrative Procedure Act, and to the absence of the Advisory Council.

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative **Wayne Goodwin** (Chair) for the Committee on **Occupational Safety and Health**.

☐ Committee Substitute for

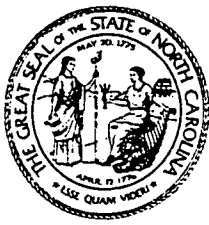
H.B. 1129 A BILL TO BE ENTITLED AN ACT TO REVISE SERVICE REQUIREMENTS TO CONFORM WITH RULE 4 OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, AND TO MAKE TECHNICAL AND OTHER CHANGES TO THE WAGE AND HOUR ACT AND THE PRIVATE PROTECTIVE SERVICES ACT.

- ☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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.



HOUSE BILL 1129: 2003 Omnibus Labor Law Changes.

BILL ANALYSIS

Committee: Occupational Safety and Health
Date: April 16, 2003
Version: First Edition

Introduced by: Representatives Fox and West
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *House Bill 1129 changes makes several changes in Chapter 95, the Labor statute, endorsed by the State Department of Labor, notably to allow notice by other kinds of carriers than mail, to abolish the Private Personnel Services Advisory Council, and to charge applicants for private personnel services licenses some of the cost of processing the licenses. Effective July 1, 2003.*

Sections 1-7 – Amends several labor statutes to allow notice to be served, not only by certified mail, but also by a delivery service designated by the U.S. Secretary of the Treasury under the Internal Revenue Code. 26 U.S.C. § 7502(f)(2). The Code authorizes the Secretary to designate any service that meets at least 3 criteria:

- Is available to the general public.
- Is at least as timely and reliable on a regular basis as the U.S. mail.
- Records electronically or on its cover the date on which the item to be delivered was given to the delivery service.

The General Assembly has adopted this U.S. Treasury-designated delivery in Rule 4 of the Rules of Civil Procedure.

Section 8 — Repeals G.S. 95-25.3A, which permitted an employer to pay an employee a "training wage" rather than the minimum wage between the dates of January 1, 1992, and April 1, 1993. The 1991 bill that enacted the statute did not contain an expiration date, so it is still on the books. But it hasn't applied to anyone for 10 years, and the Department of Labor felt it was causing confusion and should be repealed.

Section 9 — Amends the licensing statute for private personnel services to do 2 things:

- Charge the applicant for the newspaper notice the Department must take out and the background investigation the Department must make as part of processing each application.
- Gives the Department more time to process an application: 60 days after the application is received (rather than the current 30 days), or if the investigation takes longer than that, a maximum of 75 days (rather than the current 45).

Sections 10-11 — Abolishes the Private Personnel Service Advisory Council, a 12-member body charged with advising the Commissioner of Labor on the regulation of private personnel services and approving rules adopted by the Commissioner.

Section 12 — Amends G.S. 95-47.9, the enforcement statute for private personnel services, to adapt it to Chapter 150B, the Administrative Procedure Act, and to the absence of the Advisory Council.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1129

Short Title: 2003 Omnibus Labor Law Changes.

(Public)

Sponsors: Representatives Fox and West (Primary Sponsors).

Referred to: Occupational Safety and Health.

April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO REVISE SERVICE REQUIREMENTS TO CONFORM WITH RULE 4
OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE, AND TO
MAKE TECHNICAL AND OTHER CHANGES TO THE WAGE AND HOUR
ACT AND THE PRIVATE PROTECTIVE SERVICES ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-25.23(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.5 (Youth Employment) or any regulation issued thereunder, shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each violation. In determining the amount of such penalty, the appropriateness of such penalty to the size of the business of the person charged and the gravity of the violation shall be considered. The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 2. G.S. 95-25.23A(a) reads as rewritten:

"(a) Any employer who violates the provisions of G.S. 95-25.15(b) or any regulation issued pursuant to G.S. 95-25.15(b), shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per employee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

1 The determination by the Commissioner shall be final, unless within 15 days after
2 receipt of notice thereof by certified ~~mail~~, ~~mail~~ or by a designated delivery service
3 authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged
4 with the violation takes exception to the determination, in which event final
5 determination of the penalty shall be made in an administrative proceeding pursuant to
6 Article 3 of Chapter 150B and in a judicial proceeding pursuant to Article 4 of Chapter
7 150B."

8 **SECTION 3.** G.S. 95-110.10(e) reads as rewritten:

9 "(e) The determination of the amount of the penalty by the Commissioner shall be
10 final, unless within 15 days after receipt of notice thereof by certified mail or by a
11 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
12 receipt, the person charged with the violation takes exception to the determination in
13 which event the final determination of the penalty shall be made in an administrative
14 proceeding and in a judicial proceeding pursuant to Chapter 150B of the General
15 Statutes, the Administrative Procedure Act."

16 **SECTION 4.** G.S. 95-111.13(g) reads as rewritten:

17 "(g) The determination of the amount of the penalty by the Commissioner shall be
18 final, unless within 15 days after receipt of notice thereof by certified ~~mail~~, ~~mail~~ or by a
19 designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
20 receipt, the person charged with the violation takes exception to the determination, in
21 which event final determination of the penalty shall be made in an administrative
22 proceeding and in a judicial proceeding pursuant to Chapter 150B of the General
23 Statutes, the Administrative Procedure Act."

24 **SECTION 5.** G.S. 95-123 reads as rewritten:

25 **"§ 95-123. Orders.**

26 If, after investigation, the Commissioner finds that a violation of any of his rules and
27 regulations exists, or that there is a condition in passenger tramway construction,
28 operation, or maintenance which endangers the safety of the public, the Commissioner
29 shall forthwith issue his written order setting forth his findings, the corrective action to
30 be taken, and fixing a reasonable time for compliance therewith. The order shall be sent
31 to the affected operator by certified mail or by a designated delivery service authorized
32 pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, and shall become final unless
33 the operator contests the order by filing a petition for a contested case under G.S.
34 150B-23 within 20 days after receiving the order. The Commissioner shall have the
35 power to institute injunctive proceedings in any court of competent jurisdiction of the
36 district court district as defined in G.S. 7A-133 or superior court district or set of
37 districts as defined in G.S. 7A-41.1, as the case may be, in which the passenger tramway
38 is located for the purpose of restraining the operation of said tramway or for compelling
39 compliance with any lawful order of the Commissioner. Judicial review of a final
40 decision under this section may be obtained under Article 4 of Chapter 150B of the
41 General Statutes."

42 **SECTION 6.** G.S. 95-137(b) reads as rewritten:

43 "(b) Procedure for Enforcement. –

1 (1) If, after an inspection or investigation, the Director issues a citation
2 under any provisions of this Article, the Director shall, within a
3 reasonable time after the termination of such inspection or
4 investigation, notify the employer by certified mail or by a designated
5 delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with
6 delivery receipt, of any penalty, if any, the Director has recommended
7 to the Commissioner to be proposed under the provisions of this
8 Article and that the employer has 15 working days within which to
9 notify the Director that the employer wishes to:

10 a. Contest the citation or proposed assessment of penalty; or

11 b. Request an informal conference.

12 Following an informal conference, unless the employer and
13 Department have entered into a settlement agreement, the Director
14 shall send the employer an amended citation or notice of no change.
15 The employer has 15 working days from the receipt of the amended
16 citation or notice of no change to notify the Director that the employer
17 wishes to contest the citation or proposed assessment of penalty,
18 whether or not amended. If, within 15 working days from the receipt
19 of the notice issued by the Director, the employer fails to notify the
20 Director that the employer requires an informal conference to be held
21 or intends to contest the citation or proposed assessment of penalty,
22 and no notice is filed by any employee or representative of employees
23 under the provisions of this Article within such time, the citation and
24 the assessment as proposed to the Commissioner shall be deemed final
25 and not subject to review by any court.

26 (2) If the Director has reason to believe that an employer has failed to
27 correct a violation for which a citation has been issued within the
28 period permitted for its correction (which period shall not begin to run
29 until the entry of a final order by the Board in case of any review
30 proceedings under this Article initiated by the employer in good faith
31 and not solely for a delay or avoidance of penalties), the Director shall
32 notify the employer by certified ~~mail~~ mail or by a designated delivery
33 service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery
34 receipt, of such failure and of the penalty proposed to be assessed
35 under this Article by reason of such failure and that the employer has
36 15 working days within which to notify the Director that the employer
37 wishes to contest the Director's notification of the proposed assessment
38 of penalty. If, within 15 working days from the receipt of notification
39 issued by the Director, an employer fails to notify the Director that the
40 employer intends to contest the notification or proposed
41 recommendation of penalty, the notification and the proposed
42 assessment made by the Director shall be final and not subject to
43 review by any court.

- (3) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.
- (4) If an employer notifies the Director that the employer intends to contest a citation issued under the provisions of this Article or notification issued under the provisions of this Article, or if, within 15 working days of the receipt of a citation under this Article, any employee or representative thereof files a notice with the Director alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Director shall immediately advise the Board of such notification, and the Board shall afford an opportunity for a hearing. The Board shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Director's citation or the proposed penalty fixed by the Commissioner, or directing other appropriate relief, and such order shall become final 30 days after its issuance. Upon showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that an abatement has not been completed because of factors beyond the employer's reasonable control, the Director, after an opportunity for a hearing as provided in this Article, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the chairman of the Board shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this section.
- (5) Repealed by Session Laws 1993, c. 300, s. 2.
- (6) Each local unit of government shall report each violation for which it is issued a citation to its local governing board at its next public meeting and to its workers compensation insurance carrier or to the risk pool of which it is a member pursuant to Article 23 of Chapter 58 of the General Statutes."

SECTION 7. G.S. 95-234(a) reads as rewritten:

"§ 95-234. Violation of controlled substance examination regulations; civil penalty.

(a) Any examiner who violates the provisions of this Article shall be subject to a civil penalty of up to two hundred fifty dollars (\$250.00) per affected examinee with the maximum not to exceed one thousand dollars (\$1,000) per investigation by the Commissioner of Labor or his authorized representative. In determining the amount of the penalty, the Commissioner shall consider:

- (1) The appropriateness of the penalty for the size of the business of the employer charged; and
- (2) The gravity of the violation.

The determination by the Commissioner shall be final, unless within 15 days after receipt of notice thereof by certified mail, ~~mail~~ or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the person charged with the violation takes exception to the determination, in which event final

determination of the penalty shall be made in an administrative proceeding pursuant to Article 3 of Chapter 150B and which final determination shall be subject to judicial review in a judicial proceeding pursuant to Article 4 of Chapter 150B."

SECTION 8. G.S. 95-25.3A is repealed.

SECTION 9. G.S. 95-47.2 reads as rewritten:

"§ 95-47.2. Licensing procedures.

(a) No person shall open, keep, maintain, own, operate or carry on a private personnel service unless the person has first procured a license therefor as provided in this Article.

(b) An application for license shall be made to the Commissioner. If the private personnel service is owned by an individual, the application shall be made by that individual; if the service is owned by a partnership, the application shall be made by all partners; if the service is owned by a corporation, the application shall be made by all stockholders who own at least twenty percent (20%) of the issued and outstanding voting stock of the corporation, or if the service is owned by an association, society, or corporation in which no one individual owns at least twenty percent (20%) of the issued and outstanding voting stock, the application shall be made by the president, vice-president, secretary and treasurer of the owner, by whatever title designated. The application shall state the name and address of the individual who is responsible for the direction and operation of the placement activities of the private personnel service whether that individual be one of the applicants or another person; whether or not that individual has ever been employed in a private personnel service; the name and address of each of the license applicant's prior employers during the five years immediately preceding the license application; and such other information relating to the good moral character of that individual as the Commissioner may require. No change in such persons shall take place without prior notification to the Commissioner.

(c) Each application for license shall be in writing and in the form prescribed by the Commissioner, and shall state truthfully the name under which the business is to be conducted; the street and number of the building or place where the business is to be conducted.

(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 applicant shall incur the cost associated with the publication of this legal advertisement. 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,

1 if he determines the protest to be of such a nature that a hearing should
2 be conducted and that the protest is for a cause on which denial of a
3 license may properly be based, shall appoint a time and place for a
4 hearing on the application and shall give at least seven days' notice of
5 that time and place to the license applicant and to the person filing the
6 protest. The hearing shall be conducted in accordance with the
7 provisions of the rules of the Administrative Procedure ~~Act~~Act.

- 8 (2) Shall investigate the character, criminal record and business integrity
9 of each applicant for agency license and shall investigate the criminal
10 records of all persons listed as agency owners, officers, directors or
11 managers. The applicant and all agency owners, officers, directors and
12 managers shall assist the department in obtaining necessary
13 information by authorizing the release of all relevant
14 ~~information; information.~~ The applicant shall incur the cost associated
15 with this background investigation.

- 16 (2a) The Department of Justice may provide a criminal record check to the
17 Commissioner for a person or agency who has applied for a license
18 through the Commissioner. The Commissioner shall provide to the
19 Department of Justice, along with the request, the fingerprints of all
20 applicants, any additional information required by the Department of
21 Justice, and a form signed by the applicants consenting to the check of
22 the criminal record and to the use of the fingerprints and other
23 identifying information required by the State or national repositories.
24 The applicants' fingerprints shall be forwarded to the State Bureau of
25 Investigation for a search of the State's criminal history record file, and
26 the State Bureau of Investigation shall forward a set of the fingerprints
27 to the Federal Bureau of Investigation for a national criminal history
28 check. The Commissioner shall keep all information pursuant to this
29 subdivision privileged, in accordance with applicable State law and
30 federal guidelines, and the information shall be confidential and shall
31 not be a public record under Chapter 132 of the General Statutes.

32 The Department of Justice may charge each applicant a fee for
33 conducting the checks of criminal history records authorized by this
34 subdivision.

- 35 (3) Upon completion of the investigation, or ~~30 days~~ 60 days after the
36 application was received, whichever is later, but in no case more than
37 ~~45 days~~ 75 days after the application was received, shall determine
38 whether or not a license should be issued. The license shall be denied
39 for any of the following reasons:

- 40 a. If the applicant for agency license, or the president or majority
41 shareholder of a corporate applicant, omits or falsifies any
42 material information asked for in the application and required
43 by the ~~Commissioner~~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~~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).

(e) If it appears upon the hearing or from the inspection, examination or investigation made by the Commissioner that the owners, partners, corporation officers or the agency manager are not persons of good moral character or that the license applicant has not complied with the provisions of this Article, the application shall be denied and a license shall not be granted. The Commissioner shall find facts to substantiate his denial of the issuance of a license. Each application shall be granted or refused within ~~30 days~~ 60 days from the date of its filing, or if a hearing is held, within ~~45 days~~ 75 days. Any license heretofore or hereafter issued shall expire 12 months from the date of its issuance, and shall be renewed as hereinafter provided unless sooner revoked by the Commissioner.

(f) No license shall be granted to a person to operate as a private personnel service where the name of the business is similar or identical to that of any existing licensed business (except where a franchiser has licensed two or more persons to use the same name within the State) or directly or indirectly expresses or connotes any limitation, specification or discrimination contrary to current State or federal laws against discrimination in employment.

(g) Every license shall contain the name of the person licensed and shall designate the city in which the license is issued, the name of the manager and date of the license. The license shall be displayed in a conspicuous place in the area where job applicants are received by the agency.

(h) A license granted as provided in this Article shall not be valid for any person other than the person to whom it is issued or for any place other than that designated in

1 the license and shall not be assigned or transferred without the consent of the
2 Commissioner, whose consent must be based on the standards contained in this Article.
3 Applications for consent to assign or transfer shall be made in the same manner as an
4 application for a license, and all the provisions of this Article shall apply to applications
5 for consent. The location of a private personnel service shall not be changed without
6 notice to the Commissioner, and any change of location shall be endorsed upon the
7 license. A person who has obtained a license in accordance with the provisions of this
8 Article may apply for additional licenses to conduct additional private personnel
9 services in accordance with the provisions of this Article. The manner of application,
10 and the conditions and terms applicable to the issuance of the additional licenses shall
11 be the same as for an original license. The same agency manager may be designated in
12 all such licenses.

13 (i) Temporary license. – If ownership of a licensed private personnel service is
14 transferred, the department shall issue a temporary license to any new owner or
15 successor if it appears to the department that issuance of such a license would serve the
16 public interest. A temporary license shall be effective for a period of 90 days and shall
17 not be renewed.

18 (j) Each licensee shall, before the license is issued or renewed, deposit with the
19 department a bond payable to the State of North Carolina and executed by a surety
20 company duly authorized to transact business in the State of North Carolina in the
21 amount of ten thousand dollars (\$10,000) and upon condition that the private personnel
22 service will pay to applicants all refunds due under this Article and regulations adopted
23 hereunder if the private personnel service terminates its business."

24 **SECTION 10.** G.S. 95-47.7 is repealed.

25 **SECTION 11.** G.S. 95-47.8 is repealed.

26 **SECTION 12.** G.S. 95-47.9 reads as rewritten:

27 **"§ 95-47.9. Enforcement of Article; rules; hearing; penalty; criminal penalties.**

28 (a) This Article shall be enforced by the Commissioner. The Commissioner or
29 any duly authorized agent, deputies or assistants designated by the Commissioner, may
30 upon receipt of a complaint that a private personnel service has violated a specific
31 section of this Article, inspect those records relevant to the complaint which this Article
32 requires the private personnel service to retain. The Commissioner may also subpoena
33 those records and witnesses and may conduct investigations of any employer or other
34 person where the Commissioner has reasonable grounds for believing that the employer
35 or person has conspired or is conspiring with a private personnel service to violate this
36 Article.

37 ~~(b) The Commissioner may make reasonable administrative rules within the~~
38 ~~standards set in this Article. Before such rules are presented to the Advisory Council,~~
39 ~~the Commissioner shall conduct a public hearing, giving due notice thereof to all~~
40 ~~interested parties and shall afford the opportunity for written comments. No rule shall~~
41 ~~become effective until 60 days after the public hearing and Advisory Council approval,~~
42 ~~and copies thereof shall be furnished to all private personnel services at least 30 days~~
43 ~~prior to the effective date of the rule.~~ The Commissioner shall have the authority to
44 promulgate rules necessary to carry out and administer the provisions of this Article.

1 (c) Complaints against any licensed person shall be made in writing to the
2 Commissioner, ~~or be sent in affidavit form without a personal appearance of the~~
3 ~~complainant.~~ Commissioner.

4 (1) If the complaint alleges a violation of this Article, the Commissioner
5 shall cause an investigation to be made. If, as a result of the
6 investigation, the Commissioner has reason to believe that a material
7 violation of this Article has been committed by a private personnel
8 service, the Commissioner ~~may hold a hearing. Reasonable notice~~
9 ~~thereof, not less than 10 days, shall be given in writing to the licensed~~
10 ~~person involved by serving upon him either personally, by registered~~
11 ~~or certified mail, or by leaving the same with the manager, a copy of~~
12 ~~the complaint. A hearing shall be held before the Commissioner with~~
13 ~~reasonable promptness but in no event later than 30 calendar days from~~
14 ~~the date of the filing of the complaint. The Commissioner, when~~
15 ~~investigating any matters pertaining to the granting, issuing,~~
16 ~~transferring, renewing, revoking, suspending or canceling of any~~
17 ~~license may take such testimony as he deems necessary on which to~~
18 ~~base official action. When taking such testimony he may subpoena~~
19 ~~witnesses and also direct the production before him of necessary and~~
20 ~~material books and papers. A daily calendar of all hearings shall be~~
21 ~~kept by the Commissioner and shall be posted in a conspicuous place~~
22 ~~in his public office for at least one day before the date of the hearings.~~
23 ~~The Commissioner shall render his decision within eight calendar days~~
24 ~~from the date of the completion of the hearing. The Commissioner~~
25 ~~shall keep a record of all such complaints and hearings.~~ may, after
26 compliance with Chapter 150B of the General Statutes, deny, suspend,
27 or revoke a license issued under this Article if it is determined that the
28 licensee or any employee of the licensee is guilty of violating the
29 provisions of this Article. In addition, the Commissioner may issue
30 warnings or levy a fine against the private personnel service that shall
31 not exceed two hundred fifty dollars (\$250.00).

32 (2) The denial, revocation, or suspension of a license, or the issuance of a
33 warning or fine by the Commissioner shall be in writing, shall be
34 signed by the Commissioner or the Commissioner's designee, and shall
35 state the grounds upon which the decision is based. The aggrieved
36 person shall have the right to appeal from the decision as provided by
37 Chapter 150B of the General Statutes.

38 (d) ~~If at the hearing conducted pursuant to subsection (c) of this section, it has~~
39 ~~been shown that the private personnel service or any employee of that personnel service~~
40 ~~is guilty of violating the provisions of this Article, the Commissioner may issue~~
41 ~~warnings, or levy a fine against the personnel service which shall not exceed two~~
42 ~~hundred and fifty dollars (\$250.00), and, for repeated willful violations, may suspend or~~
43 ~~revoke the license of the personnel service. Whenever the Commissioner suspends or~~
44 ~~revokes the license of any private personnel service, or levies a fine against a service,~~

1 ~~the determination is subject to judicial review in proceedings brought pursuant to the~~
2 ~~Administrative Procedure Act. Whenever a license is revoked, revoked pursuant to~~
3 ~~subsection (c) of this section, another license shall not be issued to the same person~~
4 ~~within three years from the date of the revocation. The Commissioner, Deputy~~
5 ~~Commissioner, or Director, Private Personnel Service Division may conduct hearings~~
6 ~~and act upon applications for licenses, and may revoke or suspend such licenses, or levy~~
7 ~~finer.~~

8 (e) Any person who operates as a private personnel service without first
9 obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be
10 subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than one
11 hundred dollars (\$100.00) for each day the private personnel service operates without a
12 license, the penalty not to exceed a total of two thousand dollars (\$2,000). Actions to
13 recover civil penalties shall be initiated by the Attorney General. The clear proceeds of
14 civil penalties provided for in this section shall be remitted to the Civil Penalty and
15 Forfeiture Fund in accordance with G.S. 115C-457.2."

16 SECTION 13. This act becomes effective July 1, 2003.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1129

H1129-ARR-10 [v.1]

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

Page 1 of 1

Date _____, 2003

Comm. Sub. [NO]
Amends Title [YES]
First Edition

Representative _____

- 1 moves to amend the bill on page 1, line 5,
2 by deleting the term "PROTECTIVE" and substituting the term "PERSONNEL"; and
3
4 on page 3, lines 6 and 34,
5 by inserting after the term "receipt," the term "or via hand delivery"; and
6
7 on page 8, lines 43 and 44,
8 by deleting the term "shall have the authority to promulgate" and substituting the term
9 "shall adopt".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____



Bill Summary

HOUSE BILL 1129:2003 OMNIBUS LABOR LAW CHANGES

Rep. Goodwin - This is the information we promised Rep. Blackwood this morning. We've discussed this with him, he is satisfied with the increase in the # of days from 30-45 to 60-75. If you have any further questions, please let me know. Thank -
John Hoomani

Committee:	Occupational Safety and Health	Introduced By:	Fox (Prime Sponsor) West (Prime-Sponsor)
Date Filed:	April 9, 2003	Summary By:	John Hoomani
Date Referred:	April 10, 2003	Version:	Edition 1

SUMMARY: *Section 9 of House Bill 1129 extends the time frame in which applications for licenses under the Private Personnel Services Act must be processed. The current time frame is from 30-45 days, and this section expands that time frame to 60-75 days.*

TIME FRAME FOR TYPICAL PPS APPLICATION

<u>Event</u>	<u>Days to Complete</u>	<u>Number of Days Elapsed Since Application Filed</u>
Application filed with Wage & Hour Bureau (WHB)		1
Application reviewed by WHB staff (from the date it is received in the NCDOL mail room, to the date it is delivered to the WHB, to the time someone at the WHB has a chance to review it)	2	3
Proposed Contract with prospective customers reviewed by WHB staff to determine if it meets all of the necessary requirements	1	4
Application does not contain all of the required information (e.g., application is not notarized, names of all employees or directors not listed, surety bond not attached or not properly executed, copy of proposed contract with prospective customers not attached or incorrect) - this time frame includes the time it takes to mail the application or other documents back to the applicant, the time it takes the applicant to correct the mistakes or acquire any additional information, and the time it takes the applicant to mail the additional information back to the WHB	7	11
WHB requests background check from the Department of Justice	3	14
WHB requests that the required notice of pending application be published in a newspaper of general circulation in the area of the proposed location	2	16
Time frame in which an interested party may file a written protest with NCDOL opposing the approval of the application	10	26
After receiving the written protest, a public hearing must be conducted and the interested parties should be given <u>at least</u> 7 days notice of the time and place for such hearing	7	33
Decision made by Commissioner as to whether to approve the license application following the hearing	2	35

Note 1: These are **business days**, not calendar days, so this time frame would be extended based on the number of weekends or holidays which occur during this period of time. And, these are best-case scenarios, assuming everything runs smoothly - some things are out of our control.

Note 2: All of these duties were once handled by an independent division of NCDOL, but were recently absorbed by the WHB in order to reduce costs in the Department. Therefore, these duties are now being performed by members of the WHB in addition to their other statutorily-prescribed duties.

Note 3: As things currently stand, if all of the documents are not received in the 30-45 day time period, the applicant must withdraw his/her/its application and resubmit it at a later time. This extension of the time period would help prevent that situation from arising.

VISITOR REGISTRATION SHEET

Occupational Safety & Health
Name of Committee

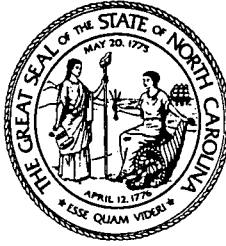
4.16.03
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Dave Simpson	CANULINAS AOC
Jennifer Hargood	Fiscal Research
Doug Cassiter	NCSTA
Tom Mickey	NC VETERINARY MEDICAL BOARD
David Marshall	NCUMB
Chris Nichols	Hunter + Williams
Amy Dobson	NC Statewatch
Becky Brown	Labor
Art Britt	"
Kevin Beauregard	"
John Hooten	"
Nancy Thompson	UMCIC
Amy Fullbright	Hunter + Williams
Jewell	IVCRA
Bjorklin	NCATL
PS P	NCFB
SILCO COBBIN	RECLUT



North Carolina House of Representatives

Committee on Occupational Safety and Health

Legislative Office Building, Room 415

Agenda

April 23, 2003

10:00 a.m.

Call to Order

**Representative Wayne Goodwin
Chair**

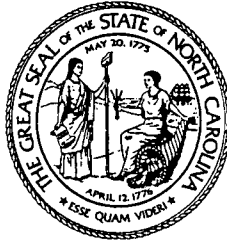
HB 1031 – AN ACT TO PROVIDE THAT CREDIBLE SERVICE FOR LAW ENFORCEMENT OFFICERS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF ABSENCE WHEN IN RECEIPT OF WORKERS' COMPENSATION BENEFITS AS A RESULT OF INJURY INCURRED IN THE LINE OF DUTY – Glazier and Eddins

HB 1193 – AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROVIDE THAT RESCUE AND PUBLIC SAFETY PERSONNEL SHALL NOT BE TERMINATED FOR BEING ABSENT FROM EMPLOYMENT DUE TO AN EMERGENCY – Goodwin

HB 1182 – AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO INCREASE THE RANGE OF CIVIL PENALTIES THAT MAY BE IMPOSED WHEN A WORKPLACE DEATH OCCURS DUE TO EMPLOYER NEGLIGENCE - Goodwin

HB 1181 – AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO PROVIDE FOR VERIFICATION OF FULL COMPLIANCE WITH MANDATED CORRECTIVE MEASURES WHEN THERE ARE TEN OR MORE SERIOUS WORKPLACE SAFETY VIOLATIONS DURING AN INSPECTION AT A SINGLE SITE – Goodwin

Adjourn



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

April 23, 2003

The House Committee on Occupational Safety and Health met on April 23, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Blackwood, Cole, Culpepper, Dickson, Eddins, Goodwin, Hall, Hunter, McHenry and West.

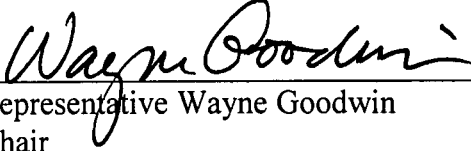
Committee Chair Representative Wayne Goodwin called the meeting to order at 10:07 AM and introduced the Sergeant of Arms, Bill Sullivan and Jim Womack, and the pages.

The chair noted that the proposed committee substitute for House Bill 1031 -- AN ACT TO PROVIDE THAT CREDIBLE SERVICE FOR LAW ENFORCEMENT OFFICERS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF ABSENCE WHEN IN RECEIPT OF WORKERS' COMPENSATION BENEFITS AS A RESULT OF INJURY INCURRED IN THE LINE OF DUTY -- was properly before the committee and recognized Representative Glazier to explain the bill. Representative Glazier called on Officer May of the Town of Wake Forest and Detective Miller of the City of Raleigh to speak on the bill. Upon motion of Representative Eddins, the proposed committee substitute was adopted, given a favorable report and re-referred to the House Committee on Pensions and Retirement and the original bill given an unfavorable report.

The chair called upon Representative Dickson to serve as acting chair while he presented House Bill 1193 -- AN ACT AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROVIDE THAT RESCUE AND PUBLIC SAFETY PERSONNEL SHALL NOT BE TERMINATED FOR BEING ABSENT FROM EMPLOYMENT DUE TO AN EMERGENCY. The chair recognized Representative Goodwin to put forth an amendment. Upon motion of the Representative Blackwood, the amendment was adopted. The chair recognized Representative Blackwood to put forth an amendment. Upon vote of the committee, the amendment failed. Representative West moved that the original bill be given an unfavorable report and the proposed committee substitute be given a favorable report. Upon voice vote, the motion unanimously passed.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:52 AM.

Respectfully submitted,



Representative Wayne Goodwin
Chair



Charlotte Graham
Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative **Goodwin** (Chair) for the Committee on **Occupational Safety and Health**.

☐ Committee Substitute for

H.B. 1193 A BILL TO BE ENTITLED AN ACT A BILL TO BE ENTITLED AN ACT
AMENDING CHAPTER 95 OF THE GENERAL STATUTES TO PROVIDE THAT
RESCUE AND PUBLIC SAFETY PERSONNEL SHALL NOT BE TERMINATED FOR
BEING ABSENT FROM EMPLOYMENT DUE TO AN EMERGENCY.

☐ 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 (# 1193), ☐ 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 ~~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)

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution 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 _____).

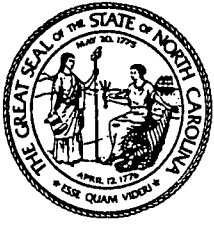
____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).

____ 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.



HOUSE BILL 1193: Job Protection for Emergency Personnel.

BILL ANALYSIS

Committee: House Occupational Safety and Health
Date: April 23, 2003
Version: First Edition

Introduced by: Rep. Goodwin
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *House Bill 1193 would protect certain rescue and public safety workers from being fired from their other jobs because they were absent or late due to responding to an emergency. Effective May 1, 2003, and applying to emergency responses on or after that date.*

CURRENT LAW: The basic law on terminations is the "employment at will" doctrine, which says the employee may quit for any reason and the employer may dismiss the employee for any reason. There are numerous exceptions to that doctrine, such as prohibitions against discrimination on the basis of race, gender, age, or disability. N.C. statutes include certain prohibitions on dismissals or demotions for absence because of certain activities: for serving on a jury (G.S. 9-32), as a precinct official (G.S. 163-41.2), for parental involvement in schools (G.S. 28.3). No such protection exists against dismissal or demotion for extra-curricular emergency service work.

BILL ANALYSIS: HB 1193 would **prohibit termination** of any employee because the employee is absent or late for work because, in one of several extra-curricular activities, the employee responded to an emergency prior to their time to report to work. The bill does not prohibit demotion or other negative action against an employee for this reason. The emergency services covered are these:

- Volunteer firefighters.
- Rescue squad member.
- Emergency medical technician.
- Law enforcement officer.
- Member of an emergency management agency.

The employer could charge against the employer's regular pay the any time lost in the protected activity. The employer could request a statement from the supervisor or acting supervisor of the emergency service of the particulars of the activity.

An employee who was fired in violation of the bill could bring a civil action (within one year of the violation) for reinstatement, back wages, and reinstated fringe benefits or seniority rights.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

FORM 9

SESSION No. _____

H. B. No. 1193

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)

)

Sen.)

1 moves to amend the bill on page 1, line 16

2 () WHICH CHANGES THE TITLE

3 by by inserting after the term "date"
4 "not more than three times a month"
5
6
7

8

9

10

11

12

13

14

15

16

17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

FORM 9

SECTION No. _____

H. B. No. _____

DATE _____

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) _____

Sen.) _____

1 moves to amend the bill on page 2, line 2

2 () WHICH CHANGES THE TITLE

3 by _____

4 inserting after that line the following:

5 " (c) This section does not apply
6 to a place of employment of
7 five or fewer employees. "

8

9

10

11

12

13

14

15

16

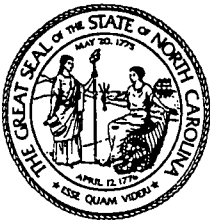
17

18

19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____



HOUSE BILL 1031: LEO Creditable Service/Workers Comp

BILL ANALYSIS

Committee: House Occupational Safety and Health

Date: April 23, 2003

Version: H1031-CSRR-18 [v.2]

Introduced by: Representatives Glazier and Eddins

Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *House Bill 1031 amends the Local Government Employees' Retirement System to allow law enforcement officers to count toward their retirement any time they spent on employer-approved leave when the officer is receiving Workers Comp as a result of injury in the line of duty caused by criminal action of another person or through an attempt to arrest or seize a suspect. During those periods the employer would be required to make both the employee and employer contributions to the retirement system. Effective when becomes law.*

CURRENT LAW: Currently, when a local government employee is on leave of absence, the member is deemed to be "in service" for purposes of the Retirement System only when the person is making contributions to the System.

BILL ANALYSIS:

Section 1 Makes a conforming change to G.S. 128-26(g), which says an employee, to get creditable service during leave, must keep making regular contributions to the System.

Section 2 – The main section of the bill. It provides that if a law enforcement officer is on leave and receiving Workers Comp as a result of certain injury in the line of duty, that leave will be "creditable service," which will count toward retirement. During that period, the employer will pay both the employee's and the employer's contributions to the System. An injury that would qualify would be one that was caused by criminal action of another person or through an attempt to arrest or seize a suspect.

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative **Goodwin** (Chair) for the Committee on **Occupational Safety and Health**.

☐ Committee Substitute for

H.B. 1031 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT CREDIBLE SERVICE FOR LAW ENFORCEMENT OFFICERS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF ABSENCE WHEN IN RECEIPT OF WORKERS' COMPENSATION BENEFITS AS A RESULT OF CERTAIN INJURIES INCURRED IN THE LINE OF DUTY.

☐ With a favorable report.

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

☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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 2003

H

1

HOUSE BILL 1031

Short Title: LEO Creditable Service/Workers'
Compensation. (Public)

Sponsors: Representatives Glazier, Eddins (Primary
Sponsors); L. Allen, Bordsen, Carney, Gibson, Jeffus, Parmon,
and Ross.

Referred to: Occupational Safety and Health.
April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO PROVIDE THAT CREDITABLE SERVICE FOR LAW ENFORCEMENT
OFFICERS IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT
SYSTEM SHALL INCLUDE PERIODS OF EMPLOYER-APPROVED LEAVES OF
ABSENCE WHEN IN RECEIPT OF WORKERS' COMPENSATION BENEFITS AS
A RESULT OF INJURY INCURRED IN THE LINE OF DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 128-26(1) is repealed.

SECTION 2. G.S. 128-26(g) reads as rewritten:

"(g)~~During~~ Except as provided in
subsection (g1) of this section, during periods when a
member is on leave of absence and is receiving less than his
full compensation, he will be deemed to be in service only if he
is contributing to the Retirement System as provided in G.S.
128-30(b)(4). If he is so contributing, the annual rate of
compensation paid to such employee immediately before the leave
of absence began will be deemed to be the actual compensation
rate of the employee during the leave of absence."

SECTION 3. G.S. 128-26 is amended by adding a
new subsection to read:

"(g1) Creditable service at retirement shall include
any periods of employer-approved leaves of absence when a member
who is a law enforcement officer is in receipt of benefits under
the Workers' Compensation Act as a result of injury incurred in
the line of duty, and the employer shall make both the employer
and employee contributions during those periods."

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

VISITOR REGISTRATION SHEET

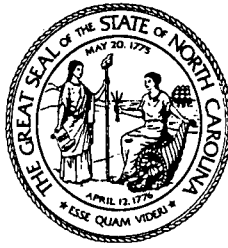
4.23.03

Date

Name of Committee

VISITORS PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Phelps	NCLM
Paul Foglia	Caroline Hairy Ann.
Rickey Payoff	Police Ben Ass.
Randy Miller	" " "
Matthew May	" " "
Rory Woods	" " "
Camille Stall	Kenned, Conington
Douglas	NCTA
Ken Melton	Allan Associates
Am. Dobson	NC Statewatch.
KEVIN BEAUREGARD	NCDOL
Barbara Jackson	WCDOL
Art Britt	WCDOL
Mrs. Becky Brown	NCDOL
Karl C Wolf	NC P.B.A
Jim Blackburn	Ass'n County Commirs
Andy Miller	Durham P.D. NC P.B.A
Daniel Edwards	Durham P.D.
Colleen Foxhane	Hafers Caldwell, P.A.
Wanda Thompson	UNCIC
Karlcell Penn	Rep. Kiser
Shan F. Durham	Charlette Observer
Mike Okun	Jordan Price
Patricia Rousen	NL Star AFL-CIO
	NCAAC



North Carolina House of Representatives

Committee on Occupational Safety and Health

Legislative Office Building, Room 415

Agenda

April 30, 2003

8:00 a.m. and 10:00 a.m.

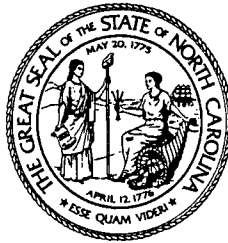
Call to Order

Rep. Wayne Goodwin, Chair

HB 1181—AN ACT AMENDING LABOR LAWS OF NORTH CAROLINA TO PROVIDE FOR VERIFICATION OF FULL COMPLIANCE WITH MANDATED CORRECTIVE MEASURES WHEN THERE ARE TEN OR MORE SERIOUS WORKPLACE SAFETY VIOLATIONS DURING AN INSPECTION AT A SINGLE SITE – Goodwin

HB 1182 – AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO INCREASE THE RANGE OF CIVIL PENALTIES THAT MAY BE IMPOSED WHEN A WORKPLACE DEATH OCCURS DUE TO EMPLOYER NEGLIGENCE – Goodwin

Adjourn



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

April 30, 2003

The House Committee on Occupational Safety and Health met on April 30, 2003 in Room 415 of the Legislative Office Building at 10:00 A.M. The following members were present: Blackwood, Cole, Culpepper, Dickson, Goodwin, Hall, Hunter, McHenry and West.

Committee Chair Representative Wayne Goodwin called the meeting to order at 10:07 AM and introduced the Sergeant of Arms, Bill Sullivan and Jim Womack, and the pages.

The chair requested that Vice-chair Blackwood serve as presiding chair. Representative Blackwood recognized Representative West to put forth a proposed committee substitute (PCS) for House Bill 1181 -- AN ACT AMENDING LABOR LAWS OF NORTH CAROLINA TO PROVIDE FOR VERIFICATION OF FULL COMPLIANCE WITH MANDATED CORRECTIVE MEASURES WHEN THERE ARE TEN OR MORE SERIOUS WORKPLACE SAFETY VIOLATIONS DURING AN INSPECTION AT A SINGLE SITE. The chair recognized Barbara Jackson of the North Carolina Department of Labor to speak on the bill. Upon motion of Representative Cole, the proposed committee substitute was adopted, given a favorable report and the original bill was given an unfavorable report. Upon voice vote, the motion unanimously passed.

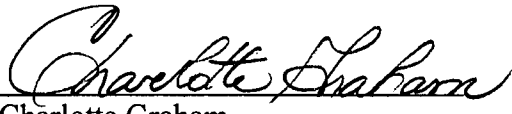
The chair recognized Representative Goodwin to speak on the PCS for House Bill 1182 - - AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO INCREASE THE RANGE OF CIVIL PENALTIES THAT MAY BE IMPOSED WHEN A WORKPLACE DEATH OCCURS DUE TO EMPLOYER NEGLIGENCE. Representative Goodwin called upon committee counsel Hal Pell to discuss the PCS. Barbara Jackson was again recognized to provide additional clarification. The chair recognized Representative West who moved that the proposed committee substitute be adopted, given a favorable report and the original bill was given an unfavorable report. Upon voice vote, the motion unanimously passed.

There being no further business before the Committee, the Chair moved that the Committee stand adjourned at 10:52 AM.

Respectfully submitted,



Representative Wayne Goodwin
Chair



Charlotte Graham
Committee Assistant

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Goodwin (Chair) for the Committee on Occupational Safety and Health.

☐ Committee Substitute for

H.B. 1181 A BILL TO BE ENTITLED AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO PROVIDE FOR VERIFICATION OF FULL COMPLIANCE WITH MANDATED CORRECTIVE MEASURES WHEN THERE ARE TEN OR MORE SERIOUS WORKPLACE SAFETY VIOLATIONS DURING AN INSPECTION AT A SINGLE SITE.

- ☐ 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 (#~~1181~~), ☒ which changes the title, unfavorable as to (the original bill) (~~Committee Substitute Bill #~~), (and recommendation that the committee substitute bill # ~~1181~~) be re-referred to the Committee on ~~Occupational Safety and Health~~.)
- ☐ With a favorable report as to House committee substitute bill (# ~~1181~~), ☐ 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)

03/19/03

FOR JOURNAL USE ONLY

____ Pursuant to Rule 36(b), the bill/resolution 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 _____).

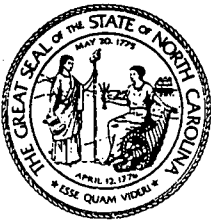
____ On motion of Rep. _____, Committee Amendment No.(s) _____ is/are adopted (by EV _____).

____ 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.



HOUSE BILL 1181: Workplace Safety/Re-inspection.

BILL ANALYSIS

Committee: House Occupational Safety and Health

Date: April 30, 2003

Version: PCS [H1181-CSRK]

Introduced by: Rep. Goodwin

Summary by: H. Alan Pell
Committee Co-Counsel

SUMMARY: *This act would amend the Occupational Safety and Health Act to require a re-inspection of any work place where a willful serious violation was found during a previous inspection. The act is effective on January 1, 2004, and applies to inspections on or after that date.*

BILL ANALYSIS:

Section 1: This amendment requires the North Carolina Department of Labor to re-inspect a work place where a willful serious violation was found to exist during a previous inspection. The inspection would take place after all appeals have been resolved and the employer was found to have willfully violated the Occupational Safety and Health Act.

Section 2: The act is effective on January 1, 2004, and applies to inspections on or after that date.

CURRENT LAW: Employers are required to file a certification of abatement of hazardous conditions if they do not contest a citation, or the citation becomes a final Order. The Department of Labor may, but is not required, to return to the work place to verify that abatement has occurred.

H1181-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1181

Short Title: Workplace Safety/Multiple Violations.

(Public)

Sponsors: Representative Goodwin.

Referred to: Occupational Safety and Health.

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO PROVIDE
3 FOR VERIFICATION OF FULL COMPLIANCE WITH MANDATED
4 CORRECTIVE MEASURES WHEN THERE ARE TEN OR MORE SERIOUS
5 WORKPLACE SAFETY VIOLATIONS DURING AN INSPECTION AT A
6 SINGLE SITE.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. Article 16 of Chapter 95 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 95-136.1. Reinspections after multiple violations.**

11 In making inspections and investigations under this Article, the Commissioner shall
12 take special care in the reinspection of workplaces where 10 or more serious workplace
13 safety violations have been found during an inspection at a single site. Any factory,
14 plant, establishment, construction site, or other area, workplace, or environment found
15 to have 10 or more serious violations as defined by G.S. 95-127(18) during an
16 inspection at a single site shall be reinspected for compliance within 30 days and the
17 reinspection shall include complete verification by the Department of full compliance
18 with all corrective requirements and measures necessary to address the serious
19 violations found during the previous inspection."

20 SECTION 2. This act becomes effective January 1, 2004, and applies to all
21 workplace safety inspections conducted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 1181
PROPOSED COMMITTEE SUBSTITUTE H1181-PCS80267-RK-27

Short Title: Workplace Safety/Reinspections.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING THE REINSPECTION OF WORKPLACES WHERE
3 WILLFUL SERIOUS VIOLATIONS HAVE BEEN FOUND.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 95-136(a) reads as rewritten:

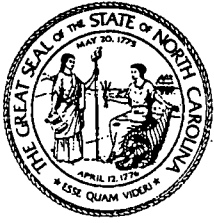
6 "(a) In order to carry out the purposes of this Article, the Commissioner or
7 Director, or their duly authorized agents, upon presenting appropriate credentials to the
8 owner, operator, or agent in charge, are authorized:

9 (1) To enter without delay, and at any reasonable time, any factory, plant,
10 establishment, construction site, or other area, work place or
11 environment where work is being performed by an employee of an
12 employer; and

13 (2) To inspect and investigate during regular working hours, and at other
14 reasonable times, and within reasonable limits, and in a reasonable
15 manner, any such place of employment and all pertinent conditions,
16 processes, structures, machines, apparatus, devices, equipment, and
17 materials therein, and to question privately any such employer, owner,
18 operator, agent or employee.

19 (3) The Commissioner or Director, or their duly authorized agents, shall
20 reinspect any place of employment where a willful serious violation
21 was found to exist during the previous inspection and a final Order has
22 been entered."

23 SECTION 2. This act becomes effective January 1, 2004, and applies to all
24 inspections conducted on or after that date.



HOUSE BILL 1182: OSHA Tech. Changes/Fatality Penalty.

BILL ANALYSIS

Committee: House Occupational Safety and Health

Date: April 30, 2003

Version: PCS [H1181-CSRK]

Introduced by: Rep. Goodwin

Summary by: H. Alan Pell
Committee Co-Counsel

SUMMARY: *This act would clarify the penalty section of the Occupational Safety and Health Act. The section would be amended to add a specific penalty for a willful violation that causes the death of an employee. The act would become effective January 1, 2004, and would apply to violations occurring on or after that date.*

BILL ANALYSIS:

Section 1: The act would re-write the existing penalty statute to clarify the types and amounts of penalties which may be issued for violations of the OSH Act. The section would be amended to add a specific penalty for a willful violation that causes the death of an employee. The minimum penalty would be \$5,000, and the maximum penalty would be \$100,000. The same adjustment factors that would apply to willful violations would be applicable to the new penalty. The penalty would be in lieu of any penalty that might otherwise apply to a willful violation.

Section 2: The act would become effective January 1, 2004, and would apply to violations occurring on or after that date.

CURRENT LAW:

The current minimum penalty for a willful violation is \$5,000, and the maximum is \$70,000.

H1182-smrk-01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1182

Short Title: Increase Civil Penalty for Workplace Death.

(Public)

Sponsors: Representative Goodwin.

Referred to: Occupational Safety and Health.

April 10, 2003

A BILL TO BE ENTITLED

AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO
INCREASE THE RANGE OF CIVIL PENALTIES THAT MAY BE IMPOSED
WHEN A WORKPLACE DEATH OCCURS DUE TO EMPLOYER
NEGLIGENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 95-138 is amended by adding a new subsection to read:

"(a1) Any employer whose actual negligence, or whose continued maintenance of
an unsafe condition, results in a workplace death may upon the recommendation of the
Director to the Commissioner be assessed by the Commissioner a civil penalty of not
more than one hundred thousand dollars (\$100,000) and not less than five thousand
dollars (\$5,000)."

SECTION 2. This act becomes effective January 1, 2004, and applies to acts
and omissions occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

D

HOUSE BILL 1182
PROPOSED COMMITTEE SUBSTITUTE H1182-PCS80300-RK-34

Short Title: OSHA Tech. Changes/Fatality Penalty.

(Public)

Sponsors:

Referred to:

April 10, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL CHANGES TO THE OCCUPATIONAL SAFETY
3 AND HEALTH ACT AND TO ENHANCE THE PENALTY IF A WILLFUL
4 VIOLATION OF THE ACT CAUSES AN EMPLOYEE'S DEATH.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 95-138 reads as rewritten:

7 "§ 95-138. Civil penalties.

8 (a) ~~Any employer who willfully or repeatedly violates the requirements of this~~
9 ~~Article, any standard, rule or order promulgated pursuant to this Article, or regulations~~
10 ~~prescribed pursuant to this Article, may upon the recommendation of the Director to the~~
11 ~~Commissioner be assessed by the Commissioner a civil penalty of not more than~~
12 ~~seventy thousand dollars (\$70,000) and not less than five thousand dollars (\$5,000) for~~
13 ~~each willful violation. Any employer who has received a citation for a serious violation~~
14 ~~of the requirements of this Article or any standard, rule, or order promulgated under this~~
15 ~~Article or of any regulation prescribed pursuant to this Article, shall be assessed by the~~
16 ~~Commissioner a civil penalty of up to seven thousand dollars (\$7,000) for each serious~~
17 ~~violation. If the violation is adjudged not to be of a serious nature, then the employer~~
18 ~~may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each~~
19 ~~nonserious violation. Any employer who fails to correct a violation for which a citation~~
20 ~~has been issued under this Article within the period allowed for its correction (which~~
21 ~~period shall not begin to run until the date of the final order of the Board in the case of~~
22 ~~any appeal proceedings in this Article initiated by the employer in good faith and not~~
23 ~~solely for the delay or avoidance of penalties), may be assessed a civil penalty of not~~
24 ~~more than seven thousand dollars (\$7,000). The assessment shall be made to apply to~~
25 ~~each day during which the failure or violation continues. Any employer who violates~~
26 ~~any of the posting requirements, as prescribed under the provision[s] of this Article,~~
27 ~~shall be assessed a civil penalty of not more than seven thousand dollars (\$7,000) for the~~
28 ~~violation. The Commissioner upon recommendation of the Director, or the Board in~~

1 ~~ease of an appeal, shall have authority to assess all civil penalties provided by this~~
2 ~~Article, giving due consideration to the appropriateness of the penalty with respect to~~
3 ~~the following factors:~~

- 4 (1) ~~Size of the business of the employer being charged,~~
- 5 (2) ~~The gravity of the violation,~~
- 6 (3) ~~The good faith of the employer, and~~
- 7 (4) ~~The record of previous violations; provided that for purposes of~~
8 ~~determining repeat violations, only the record within the previous three~~
9 ~~years is applicable.~~

10 ~~The Commissioner shall adopt uniform standards which the Commissioner, the~~
11 ~~Board, and the hearing examiner shall apply when considering the four factors for~~
12 ~~determining appropriateness of the penalty. The report of the hearing examiner and the~~
13 ~~report, decision, or determination of the Board on appeal shall specify the standards~~
14 ~~applied in determining the reduction or affirmation of the penalty assessed by the~~
15 ~~Commissioner.~~

16 (b) ~~The clear proceeds of all civil penalties and interest recovered by the~~
17 ~~Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and~~
18 ~~Forfeiture Fund in accordance with G.S. 115C-457.2.~~

19 (a) The Commissioner, upon recommendation of the Director, may assess
20 penalties against any employer who violates the requirements of this Article, or any
21 standard, rule, or order promulgated pursuant to this Article, as follows:

- 22 (1) A minimum penalty of five thousand dollars (\$5,000) to a maximum
23 penalty of seventy thousand dollars (\$70,000) for each willful or repeat
24 violation;
- 25 (2) A maximum penalty of seven thousand dollars (\$7,000) for each
26 nonserious or serious violation;
- 27 (3) A maximum penalty of seven thousand dollars (\$7,000) for each day
28 that an employer fails to correct and abate a violation, within the
29 period allowed for its correction and abatement which period shall not
30 begin to run until the date of the final Order of the Board in the case of
31 any appeal proceedings in this Article initiated by the employer in
32 good faith and not solely for the delay of avoidance of penalties;
- 33 (4) A maximum penalty of seven thousand dollars (\$7,000) for violating
34 the posting requirements, as required under the provisions of this
35 Article; and
- 36 (5) A minimum penalty of five thousand dollars (\$5,000) to a maximum
37 penalty of one hundred thousand dollars (\$100,000) for each willful or
38 repeat violation which results in the death of an employee or
39 employees. The penalty for a fatality-related violation shall be in lieu
40 of any penalty under subdivision (1) of this subsection.

41 (b) The Commissioner shall adopt uniform standards which the Commissioner,
42 the Board, and the hearing examiner shall apply when determining appropriateness of
43 the penalty. The following factors shall be used in determining whether a penalty is
44 appropriate:

(1) Size of the business of the employer being charged,

(2) The gravity of the violation,

(3) The good faith of the employer, and

(4) The record of previous violations; provided that for purposes of determining repeat violations, only the record within the previous three years is applicable.

The report of the hearing examiner and the report, decision, or determination of the Board on appeal shall specify the standards applied in determining the reduction or affirmation of the penalty assessed by the Commissioner.

(c) The clear proceeds of all civil penalties and interest recovered by the Commissioner, together with the costs thereof, shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

SECTION 2. This act becomes effective January 1, 2004, and applies to violations occurring on or after that date.

**2003 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative Goodwin (Chair) for the Committee on Occupational Safety and Health.

Committee Substitute for

H.B. 1182 A BILL TO BE ENTITLED AN ACT AMENDING THE LABOR LAWS OF NORTH CAROLINA TO INCREASE THE RANGE OF CIVIL PENALTIES THAT MAY BE IMPOSED WHEN A WORKPLACE DEATH OCCURS DUE TO EMPLOYER NEGLIGENCE.

- ☐ 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)

03/19/03

FOR JOURNAL USE ONLY

- ____ Pursuant to Rule 36(b), the bill/resolution 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.

Charlotte Graham (Rep. Goodwin)

From: Barbara Jackson [BJackson@mail.dol.state.nc.us]
Sent: Wednesday, April 23, 2003 1:55 PM
To: Wayneg@ncleg.net
Subject: RE: HB1182

Barbara Jackson

You're very welcome Representative Goodwin--Here's the information:

For federal fiscal year 2002 (October 1-September 30, 2002), NCDOL cited

- 21 Willful
- 275 Repeat
- 5211 Serious

During the same time period, we reported a total of 134 fatalities, 82 of which we investigated. Those we did not investigate included traffic accidents, heart attacks that were not work related, etc.

Please let me know if you need any additional information. Barbara

Barbara A. Jackson
General Counsel
North Carolina Department of Labor
4 W. Edenton Street
Raleigh, North Carolina 27601
(919)715-4291

E-mail correspondence to and from this sender may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

>>> "Rep. Wayne Goodwin" <Wayneg@ncleg.net> 04/23/03 01:19PM >>>
Ms. Jackson,

Thank you for your help and for taking the time to meet with me yesterday. This morning before the House OSH Committee meeting you gave me some data for consideration when one of my bills comes up in the committee. When we adjourned the staff or pages inadvertently picked up that note with the information and, I fear, discarded it. If you wouldn't mind, please email me the data.

Thanks!

- Wayne

-----Original Message-----

From: Barbara Jackson [mailto:BJackson@mail.dol.state.nc.us]
Sent: Tuesday, April 22, 2003 3:39 PM
To: wayneg@ncleg.net
Cc: Art Britt; John Hoomani; goodwinla@ncleg.net; halp@ncleg.net
Subject: HB1182

Representative Goodwin--Thank you again for taking the time to meet with us this afternoon. I'm writing to follow up on the information that you requested regarding fatalities, willful violations, serious violations, penalties assessed, etc. The Planning, Statistics and Information Management Bureau of the Occupational Safety and Health Division is compiling the information, but, unfortunately, it will take until early tomorrow morning to complete the task. We will get it to you as soon as it becomes available.

Hal had requested some information on the Imperial Foods citations, and I have copied him on this email. The Department cited Imperial Foods for 54

willful violations of the OSH Act, 23 serious violations and 6 nonserious violations. The penalties assessed for the violations were \$756,000 for the willful violations, \$50,200 for the serious violations and \$1,950 for the nonserious violations, totaling \$808,150.

Please let me know if you would like for us to research any additional information. Thanks. Barbara

Barbara A. Jackson
General Counsel
North Carolina Department of Labor
4 W. Edenton Street
Raleigh, North Carolina 27601
(919) 715-4291

E-mail correspondence to and from this sender may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

VISITOR REGISTRATION SHEET

Occupational Safety & Health
Name of Committee

4/30/03
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND BILL SPONSOR NOTIFICATION
2003-2004 SESSION**

You are hereby notified that the Committee on Occupational Safety & Health Committee Notice will meet as follows:

DAY & DATE: Wednesday, July 14, 2004

TIME: 15 minutes before session

LOCATION: Around the desk of Rep. Goodwin (Seat 81)

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

HB 1628 – ESTABLISH DOL ADVISORY/FUNDS

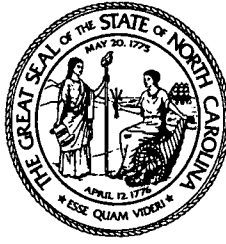
Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify that this notice was filed by the committee assistant at the following offices at 3:30 pm on **July 13, 2004**.

☒ **X** Principal Clerk
☒ **X** Reading Clerk - House Chamber

Charlotte Graham (Committee Assistant)



MINUTES
HOUSE COMMITTEE ON
OCCUPATIONAL SAFETY AND HEALTH

July 14, 2004

The House Committee on Occupational Safety and Health met on July 14, 2004 around Representative Wayne Goodwin's desk (#81) in the House chambers at 1:45 P.M. The following members were present: Blackwood, Daughtry, Dickson, Goodwin, Hall, and West. Also in attendance were Hal Pell and Bill Gilkeson of the Legislative Research Division. Visitors were Jim Lowry, executive director of the NC Utility Contractors Association, and Art Britt, assistant secretary for administration, NC Department of Labor.

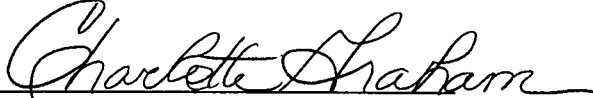
Committee Chair Representative Wayne Goodwin called the meeting to order at 10:45 PM.

The chair requested that vice-chair Dickson serve as presiding chair. Representative Dickson recognized Representative Goodwin to speak on House Bill 1628 –ESTABLISH DOL ADVISORY/FUNDS. The chair recognized Art Britt of the North Carolina Department of Labor, who informed the committee that a similar advisory council, the NC Department of Labor OSH Advisory Council, existed. Mr. Britt presented copies of the general statute establishing the council (G.S. 95-134) and a list of the current membership. The chair then recognized Mr. Jim Lowry to speak on the bill. Upon motion of Representative Goodwin, the committee unanimously voted to postpone the bill indefinitely.

Upon motion of Representative Dickson, seconded by Representative Blackwood, the committee adjourned at 2:00 P.M.

Respectfully submitted,


Representative Wayne Goodwin
Chair


Charlotte Graham
Committee Assistant

Charlotte Graham (Rep. Goodwin)

From: Bill Gilkeson (Research)
Sent: Tuesday, July 13, 2004 7:14 PM
To: Charlotte Graham (Rep. Goodwin); Rep. Wayne Goodwin
Cc: Hal Pell (Research)
Subject: RE: Committee Notice 071404

Please see attached summary. A couple of questions about the bill:

1. Does it need an effective date?
2. In all the groups who are mentioned as being represented on the Advisory Council, do you want to mention labor (i.e., employees, employees' groups, organized labor)? It sounds like all industry groups. Just a thought.

-----Original Message-----

From: Charlotte Graham (Rep. Goodwin)
Sent: Tuesday, July 13, 2004 3:35 PM
Subject: Committee Notice 071404

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND BILL SPONSOR NOTIFICATION
2003-2004 SESSION**

You are hereby notified that the Committee on Occupational Safety & Health Committee Notice will meet as follows:

DAY & DATE: Wednesday, July 14, 2004
TIME: 15 minutes before session
LOCATION: Around the desk of Rep. Goodwin (Seat 81)

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

HB 1628 - ESTABLISH DOL ADVISORY/FUNDS

Respectfully,

Representative Wayne Goodwin
Chairman

I hereby certify that this notice was filed by the committee assistant at the following offices at 3:30 pm on **July 13, 2004.**

 X Principal Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

H

1

HOUSE BILL 1628

Short Title: Establish DOL Advisory Council/Funds. (Public)

Sponsors: Representatives Goodwin; B. Allen, England, Goforth, Insko, Jones, Lucas, Parmon, and Wainwright.

Referred to: Occupational Safety and Health, if favorable, Appropriations.

May 24, 2004

A BILL TO BE ENTITLED

AN ACT ESTABLISHING THE DEPARTMENT OF LABOR ADVISORY COUNCIL AND APPROPRIATING FUNDS FOR THAT PURPOSE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 95 of the General Statutes is amended by adding a new section to read:

"§ 95-14.1. Advisory Council established.

(a) There is hereby established the Department of Labor Advisory Council (Council). The primary function of the Council is to advise the Commissioner of Labor (Commissioner) on trends in workplace safety. The Council shall consist of no more than 24 members appointed by the Commissioner to serve four-year terms. Membership on the Council shall include relatively equal representation from the construction and homebuilding industries, small business, retail business, agribusiness, local government, State government, and education.

(b) The Council shall issue a comprehensive report every two years immediately preceding the convening of the Regular Session of the General Assembly held in odd numbered years. The Council may issue interim reports at any time deemed necessary by the Commissioner."

SECTION 2. There is appropriated from the General Fund to the Department of labor the sum of twenty-five thousand dollars (\$25,000) for the 2004-2005 fiscal year to fund the Department of Labor Advisory Council established by this act.

- Board:** State Advisory Council on Occupational Safety and Health
- Authority:** N.C. Gen. Stat. § 95-134
13 N.C.A.C. 7A.0500
- Purpose:** The Council shall:
1. advise, consult and make recommendations to the Commissioner of Labor on matters relating to Article 16, *the Occupational Safety and Health Act of North Carolina*. - NCGS 95-134(b)
 2. assist the Commissioner in formulating and setting standards under the provisions of Article 16, *the Occupational Safety and Health Act of North Carolina*. - NCGS 95-134(d)
- Total Members:** 11 Total Members
- Members Appointed by Commissioner:** 11 (all) Members
- Terms:** each member shall serve a term of four years however, the terms of the members are to be staggered, and in regard to the members representing the private sector, two of these members shall serve parallel terms.
- Membership Criteria:**
- (3) members will be representative of management
 - (3) members will be representatives from labor
 - (3) members will be representatives of the public sector with knowledge of occupational safety and occupational health professions
 - (1) member will be a representative of the public sector with knowledge of migrant labor
- Chairman:** The Commissioner shall designate a member of the Council that represents the public sector as chairman
- Meetings Called:** The Council shall hold no fewer than two meetings during each calendar year.
- Report(s) Due:** None prescribed
- Establishing a Sunset:** The legislature would have to amend existing law to include a sunset provision.
- Reducing Number of Members/Meetings:** The legislature would have to amend existing law to reduce the current number of members (11) and the number of meetings (no fewer than two during each calendar year).

Board: State Advisory Council on Occupational Safety and Health (*continued*)

Eliminating/Reducing Board's Regulatory Burden on State Agencies: This Council has no regulatory authority over any state agencies.

Submitting Board Budget to State Budget Office and Legislative Staff: This council has no budget. Expenses incurred by members are paid in accordance with N.C. Gen. Stat. § 138-5.

Development since January 2001: This board continues to serve its intended statutory purpose. Since January 2001, the Commissioner has exercised her authority to make appointments as prescribed. Inadvertently, some of those appointments were made for two-year terms instead of the prescribed four-year terms. Staff has addressed this situation and in short order the members will be apprised of their amended terms of membership. This situation did not impact the work of the Council.

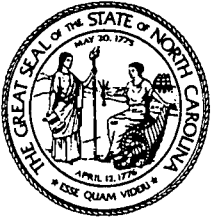
§ 95-134. Advisory Council.

(a) There is hereby established a State Advisory Council on Occupational Safety and Health consisting of 11 members, appointed by the Commissioner, composed of three representatives from management, three representatives from labor, four representatives of the public sector with knowledge of occupational safety and occupational health professions and one representative of the public sector with knowledge of migrant labor. The Commissioner shall designate one of the members from the public sector as chairman and all members of the State Advisory Council shall be selected insofar as possible upon the basis of their experience and competence in the field of occupational safety and health.

(b) The Council shall advise, consult with, and make recommendations to the Commissioner on matters relating to the administration of this Article. The Council shall hold no fewer than two meetings during each calendar year. All meetings of the Advisory Council shall be open to the public and a transcript shall be kept and made available for public inspection.

(c) The Director shall furnish to the Advisory Council such secretarial, clerical and other services as he deems necessary to conduct the business of the Advisory Council. The members of the Advisory Council shall be compensated for reasonable expenses incurred, including necessary time spent in traveling to and from their place of residence within the State to the place of meeting, and mileage and subsistence as allowed to State officials. The members of the Advisory Council shall be compensated in accordance with Chapter 138 of the General Statutes.

(d) In addition to its other duties, the Advisory Council shall assist the Commissioner in formulating and setting standards under the provisions of this Article. For this purpose the Commissioner may appoint persons qualified by experience and affiliation to present the viewpoint of the employers involved, persons similarly qualified to present the viewpoint of the workers involved, and some persons to represent the health and safety agencies of the State. The Commissioner for this purpose may include representatives or professional organizations of technicians or professionals specializing in occupational safety or health. Such persons appointed for temporary purposes may be paid such per diem and expenses of attending meetings as provided in Chapter 138 of the General Statutes. (1973, c. 295, s. 9; 1977, c. 806; 1983, c. 717, ss. 17, 18.)



HOUSE BILL 1628: Establish DOL Advisory Council/Funds

BILL ANALYSIS

Committee: House OSHA
Date: July 14, 2004
Version: First Edition

Introduced by: Rep. Goodwin
Summary by: William R. Gilkeson
Committee Co-Counsel

SUMMARY: *House Bill 1628 would establish an Advisory Council in the Department of Labor to advise the Commissioner of Labor on trends in workplace safety. The Commissioner would appoint no more than 24 members of the Council from variety of relevant fields. The bill would also appropriate \$25,000 for fiscal 2004-2005 to the Department for the Advisory Council.*

The bill requires the Advisory Council to issue a comprehensive report every 2 years immediately before the convening of the General Assembly's long session in odd-numbered years.

In appointing members of the Advisory Council, the Commissioner is directed to "include relatively equal representation from the construction and homebuilding industries, small business, retail business, agribusiness, local government, State government, and education."

*N.C. Department of Labor
OSH Advisory Council Members*

Mr. Tommy West
West Brothers Transfer & Storage
P.O. Box 6365
Raleigh, NC 27628
County: Wake
Representative of: Management

Mr. Harrison N. Thrasher, Jr.
Corporate Safety & Environmental
Jockey International Inc.
398/264 Nolley Rd.
Cooleemee, NC 27014-0398
County: Davie
Representative of: Management

J. Lindsay Cook
Senior Vice President
EI
2101 Gateway Center Blvd.
#200
Morrisville, NC 27560-6214
County: Wake
Representative of: Management

Ms. Lisa Martin
Director/Regulatory Affairs
NC Home Builders Assoc.
6716 Six Forks Rd.
Raleigh, NC 27615
County: Wake
Representative of: Management

Mr. James Andrews
President
AFL-CIO
P.O. Box 10805
Raleigh, NC 27605
County: Wake
Representative of: Organized Labor

Mr. Sexton Dale
President
International Chemical Workers Local 427
Great Lakes Carbon
308 Walker Rd.
Morganton, NC 28655
County: Burke
Representative of: Organized Labor

Mr. Benton Stacy
Safety and Health Coordinator
Charlotte Department of Transportation
600 E. 4th Street
Charlotte, N.C. 28202
County: Mecklenburg
Representative of: Public Sector

Mrs. Paula R. Page (Chairperson)
Farm Labor Specialist
NC Farm Bureau
P.O. Box 27766
Raleigh, NC 27611
County: Wake
Representative of: Public

Ms. Gloria Bone Gunther
President & Owner
Bone Rehabilitation & Consulting, Inc.
640 Donald Ross Dr.
Pinehurst, NC 28374
County: Moore
Representative of: Public

Mr. Gary Whitener
Rutherford EMC
5423 Old Shelby Rd.
Hickory, NC 28602
County: Catawba
Representative of: Public